

# ADM Chapter C1: Universal Credit - International Issues

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## Overview of the Rules C1002

C1002 With some exceptions people (called “persons subject to immigration control” (PSICs)) who require leave to enter the UK but not have it (or who have certain types of conditional leave) are excluded from UC by the Immigration Act<sup>1</sup>. Everyone else has to satisfy the basic condition that they be “in GB”. The law allows people to be treated or not treated as in GB. The end result is that

- 1.** people with certain to reside only have to be present in GB
- 2.** everyone else has to have a right to reside **and** to be habitually resident in the Common Travel Area (the UK, the Channel Islands, the Isle of Man and the Republic of Ireland) as well as being present in GB, **but**
- 3.** certain rights of EEA nationals to reside in the UK do not count

Finally, certain absences from GB are disregarded.

[1 | & A Act 99](#)

**Note:** this is just a simplified outline of the rules, DMs will need to read and apply the detailed guidance below

## Definitions C1003 - C1039

[Meaning of EEA National](#) C1003

[Meaning of EEA State](#) C1004

[EU – Member States](#) C1005 -C1039

### Meaning of EEA National

C1003 [\[See Memo ADM 19/20\]](#) “EEA national” is defined<sup>1</sup> as a national of an EEA State who

**1.** is not also a British citizen **or**

**2.** is also a British citizen and who prior to acquiring British citizenship, exercised a right to reside as such a national during their extended right of residence<sup>2</sup> or right of permanent residence<sup>3</sup>.

The exception to the above definition, is that a person does not fall within subparagraph **2.** if the person's EEA state of nationality became a member state after the person acquired British citizenship.

1 [Imm \(EEA\) Regs 2016, reg 2\(1\)](#); 2 [reg 14](#); 3 [reg 15](#)

### Meaning of EEA State

C1004 An “EEA State” means<sup>1</sup>

**1.** an EU Member State (other than the UK)

**2.** Norway, Iceland or Liechtenstein **and**

**3.** Switzerland

**Note: In this Chapter therefore references to an “EEA national” include Swiss nationals.**

1 [Imm \(EEA\) Regs 2016, reg 2\(1\)](#)

### EU – Member States

C1005 The Member States of the European Union are

**1.** Austria (joined the EU on 1.1.95)

**2.** Belgium

- 3.** Bulgaria (joined the EU on 1.1.07)
- 4.** Croatia (joined the EU on 1.7.13)
- 5.** Cyprus (joined the EU on 1.5.04)
- 6.** Czech Republic (joined the EU on 1.5.04)
- 7.** Denmark (excluding the Faroe Islands and Greenland)
- 8.** Estonia (joined the EU on 1.5.04)
- 9.** Finland (including the Aaland Islands) (joined the EU on 1.1.95)
- 10.** France (including Corsica, Guadeloupe, Martinique, Mayotte, Reunion, Saint Barthelemy and Saint Martin and French Guiana, but excluding Monaco)
- 11.** Germany
- 12.** Greece
- 13.** Hungary (joined the EU from 1.5.04)
- 14.** Ireland
- 15.** Italy (excluding the Vatican City and San Marino)
- 16.** Latvia (joined EU on 1.5.04)
- 17.** Lithuania (joined EU on 1.5.04)
- 18.** Luxembourg
- 19.** Malta (joined the EU on 1.5.04)
- 20.** Netherlands (excluding, for the purposes of this Chapter, the Dutch Antilles)
- 21.** Poland (joined EU on 1.5.04)
- 22.** Portugal (including Madeira and the Azores)
- 23.** Romania (joined the EU on 1.1.07)
- 24.** Slovakia (joined the EU on 1.5.04)
- 25.** Slovenia (joined the EU on 1.5.04)

**26.** Spain (including the Balearic Islands, the Canary Islands and the Spanish enclaves of Ceuta and Melilla)

**27.** Sweden (joined the EU on 1.1.95)

**28.** United Kingdom (including Gibraltar, but excluding, for the purposes of this Chapter, the Isle of Man and the Channel Islands).

C1006 - C1039

# Persons Subject to Immigration control, Asylum Seekers & Dual Nationals C1040 - C1119

[Person Subject to Immigration Control C1040](#)

[Meaning of PSIC C1041 - C1059](#)

[Exemptions C1060 - C1062](#)

[Asylum seekers C1063 - C1089](#)

[Dual nationals C1090 - C1119](#)

## Person Subject to Immigration Control

C1040 Unless one of the exemptions below applies, a Person Subject to Immigration Control (PSIC) is not entitled to Universal Credit<sup>1</sup>.

1 | [I & A Act 99, s 115\(1\)](#)

## Meaning of PSIC

C1041 A PSIC is<sup>1</sup> a person who is not an EEA national and who

- 1.** requires leave to enter or remain in the UK but does not have it; **or**
- 2.** has leave to enter or remain in the UK subject to the condition that they do not have recourse to public funds; **or**
- 3.** has leave to enter or remain in the UK given as a result of a maintenance undertaking.

1 | [I & A Act 99, s 115\(9\)](#)

## Meaning of “maintenance undertaking”

C1042 A “maintenance undertaking” means<sup>1</sup> a written undertaking under the immigration rules made by one person to be responsible for the claimant’s maintenance and accommodation.

1 | [I & A Act 99, s 115\(10\)](#)

C1043 - C1049

## Person subject to immigration control & EU right to reside

C1050 A person's right to reside in the UK can depend on

1. their status as determined by the Home Office **or**
2. what right a person may acquire under EU law.

There are occasions where a person subject to immigration control can claim public funds. This can be, for example, where they are the family member of an EEA national, and that EEA national is exercising a freedom of movement right (see ADM C1735 et seq) (for example, as a worker or a self-employed person), or where they demonstrate a derivative right of residence (for example, Ibrahim/Teixeira)(see ADM C1832). The granting of leave to enter or remain (whether granted with or without recourse to public funds) is made under the Immigration Rules. Where the claimant has been granted leave to enter or remain without recourse to public funds, and that person also has a right to reside under the Imm (EEA) Regs 2016, the condition of having “no recourse to public funds” does not have effect for as long as the person has a right to reside under the Imm (EEA) Regs 2016<sup>1</sup>.

*1 [Imm \(EEA\) Regs 2016, reg 43 & Sch 3, para 1](#)*

C1051 - C1059

## Exemptions

C1060 For the purposes of UC, the following people are exempt<sup>1</sup> from the exclusion of PSICs

### 1. Persons who<sup>2</sup>

**1.1** have been given leave to enter or remain in the UK upon an undertaking by another person or persons to be responsible for their maintenance and accommodation **and**

**1.2** have been resident in the UK for a period of less than 5 years beginning with the later of the date of entry or the date of the undertaking **and**

**1.3** the sponsor (or all the sponsors if there is more than one) has died.

### 2. Persons who<sup>3</sup>

**2.1** have been given leave to enter or remain in, the UK upon an undertaking by another person or persons to be responsible for their maintenance and accommodation **and**

**2.2** have been resident in the UK for a period of at least 5 years beginning with the later of the day of entry or the date of the undertaking

**Note:** Within **2.2**. DMs should consider the person's residency when deciding whether absences abroad affect the 5 year period. The absence abroad may still count as the claimant being resident in the UK, but will be dependant upon the duration and circumstance of the absence (for 'absences from GB' see C1976 et seq). If the absence abroad is such that the claimant ceases to be resident in the UK, the periods of residency at either side of the 'gap' can be added together in order to meet the 5 year rule<sup>4</sup>.

### 3. Persons who are<sup>5</sup>

**3.1** nationals of a state which has ratified the European Convention on Social and Medical Assistance (ECSMA) done in Paris on 11.12.1953 **or**

**3.2** nationals of a state which has ratified the Council of Europe Social Charter (CESC) signed in Turin on 18.10.1961

provided they are lawfully present in the UK.

1 [SS \(I&A\) CqI Amdts Regs, reg 2\(1A\)](#); 2 [Sch 1, Part I, para 23](#); 3 [Sch 1, Part I, para 3](#);

4 [R\(IS\)2/02](#); 5 [SS \(I&A\) CqI Amdts Regs, Sch 1, Part I, para 4](#)

## The European Convention on Social and Medical Assistance

C1061 [[See Memo ADM 29/20](#)] All the EU states, plus Iceland, Norway and Turkey have ratified the ECSMA.

## The Council of Europe Social Charter

C1062 [[See Memo ADM 29/20](#)] All the EU states plus Iceland, Norway, Croatia, Macedonia and Turkey have ratified the CESC.

**Note:** Croatia acceded to the EU on 1.7.13. From that date Croatian nationals are EU nationals and cannot be persons subject to immigration control<sup>1</sup> (as defined in DMG 070833)

1 [Immigration Act 1988, s 7](#)

## Asylum seekers

C1063 A person who is awaiting a decision on an application for asylum is given immigration bail<sup>1</sup> and is lawfully present in GB. However, unless and until granted asylum, an asylum seeker is a PSIC.

**Note:** various pre-existing alternatives to detention (i.e. temporary admission, temporary release on bail and release on restrictions) have been replaced by a single power to grant immigration bail<sup>1</sup>.

1 [Immigration Act 2016, Sch 10; R\(IS\) 2/06](#)

C1064 A PSIC is not normally entitled to any benefits<sup>1</sup> but there are some exceptions which include any



nationals of countries which have ratified either ECSMA or CESC who are lawfully present in GB<sup>2</sup>.

1 [Immigration and Asylum Act 1999, s 115](#); 2 [SS \(I&A\) Cpl Amdts Regs, reg 2\(1A\) & Sch 1, para 4](#)

C1065 Therefore an asylum seeker from Macedonia, or Turkey is not precluded from UC under section 115. However, an asylum seeker on immigration bail has neither a right to reside nor can be habitually resident. Simple lawful presence following immigration bail does not equate to a right to reside<sup>1</sup>.

1 [R\(IS\) 8/07 & R\(IS\) 3/08](#)

### **Claimant unable to provide documentary evidence of nationality**

C1066 The claimant has primary responsibility to provide documentary evidence of their nationality, to support their continued residence in the UK. If the claimant has not provided sufficient evidence to the DM to confirm that they have leave to enter or remain in the UK with recourse to public funds, they will be a person subject to immigration control.

C1067 Evidence of nationality must be in the form of

1. a valid passport containing the immigration stamp or vignette granting them leave to remain **or**
2. a Biometric Residence Permit.

**Note:** A Home Office Immigration Status Document with a residence permit vignette granting leave to remain **or** a Home Office decision letter granting leave to remain may accompany a passport.

C1068 The evidence in C1067 should contain information detailing

1. the type of leave to enter or remain that has been granted (where limited leave to enter or remain has been granted, an expiry date should also be shown) **and**
2. whether the person has been granted recourse to public funds.

**Note:** If a person has leave to enter or remain in the UK with the condition that there is No Recourse to Public Funds (NRPF), this will be specified on the reverse side of their residence permit, entry clearance vignette, biometric residence permit (BRP) or biometric residence card (BRC), which will say 'no public funds'. If a person has valid leave to enter or remain in the UK and there is no reference to NRPF on their immigration documentation, DMs should accept that there is recourse to public funds.

C1069 Where the claimant declares that they have leave to enter or remain in the UK with recourse to public funds, but are awaiting documentation from the HO to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

C1070 - C1089

## Dual nationals

### Transitional provisions

C1090 In determining whether a person satisfies the requirements of being a dual national who may continue to be treated as an EEA national, transitional provisions provide that the definition of EEA national (see ADM C1003) is to be read as if that definition was in force at all relevant times<sup>1</sup>.

*1 [Imm \(EEA\) \(Amendment\) Regulations 2018, reg 3\(a\)](#)*

### Dual national - EEA national who acquires British citizenship

C1091 Specified legislation<sup>1</sup> provides the circumstances where a national of an EEA state, who is also a British citizen (a dual national), may continue to be treated as an EEA national.

*1 [Imm \(EEA\) Regs 2016, reg 9A; Lounes \(C-165/16\)](#)*

### Meaning of dual national

C1092 A dual national means<sup>1</sup> a person falling within C1003 **2**..

*1 [Imm \(EEA\) Regs 2016, reg 9A\(1\)](#)*

### Dual national who may continue to be treated as an EEA national

C1093 A dual national must not have, at any point since having acquired British citizenship, lost their right of permanent residence or their status as a qualified person.

C1094 A dual national must provide evidence that they

- 1.** had acquired a right of permanent residence prior to becoming a British citizen and have not at any time, subsequent to acquiring their British citizenship, lost their right of permanent residence<sup>1</sup> **or**
- 2.** were a qualified person at the time of acquiring their British citizenship<sup>2</sup> and have not at any time subsequent to acquiring British citizenship, lost their status as a qualified person<sup>3</sup>.

*1 [Imm \(EEA\) Regs 2016, reg 9A\(3\)](#); 2 [reg 9A\(3\) & \(4\)](#); 3 [reg 9A\(2\)\(b\)](#)*

### Transitional provisions

C1095 Transitional provisions specify that the legislation providing the requirements for a dual national who may continue to be treated as an EEA national (C1093 – C1094) is to be treated if that legislation was in force at all relevant times.

*1 [Imm \(EEA\) \(Amendment\) Regulations 2018, reg 3\(b\)](#); 2 [Imm \(EEA\) Regs 2016, reg 9A](#)*

## Example

Mrs B, an Estonian national, arrived in the UK in March 2010 using her Estonian passport. She began full-time employment immediately. In March 2015, Mrs B acquired a right of permanent residence (HO issuing a document certifying this). In April 2016, she acquired her British citizenship, but retained her Estonian citizenship.

On 6.1.18, Mrs B's father (Mr G) arrived in the UK, claiming UC on 14.4.18 as the dependent family member of Mrs B. Mr G provided evidence of Mrs B's permanent residence document dated March 2015, her valid UK passport and valid Estonian passport, along with a variety of her wage slips in order to show that, since acquiring her right of permanent residence, this has not been lost through an absence from the UK in excess of 2 years.

The DM determines that Mrs B falls within the definition of being an EEA national, as she has exercised free movement rights as an EEA national prior to acquiring her British citizenship. The DM also determines that Mrs B may continue to be treated as an EEA national as she had acquired a right of permanent residence prior to becoming a British citizen, and had not lost that right of permanent residence since acquiring her British citizenship.

C1096 – C1119

# The Presence Condition C1120 - C1165

[In Great Britain](#) C1120

[Meaning of “in Great Britain”](#) C1121 - C1165

## In Great Britain

C1120 It is one of the basic conditions of entitlement to UC that a person is “in Great Britain”<sup>1</sup>. However regulations can<sup>2</sup>

1. provide for exceptions to this basic requirement<sup>3</sup>
2. specify circumstances in which a person is to be treated as being or not being in GB
3. specify circumstances in which temporary absences can be disregarded **and**
4. modify the UC rules where a person is entitled to UC because a temporary absence has been disregarded.

**Note:** in the case of joint claims, both members of the couple have to satisfy the basic condition that they be “in GB”<sup>4</sup>. But see Chapter D1 for guidance on when one member of a joint claim couple does not satisfy the basic condition while the other continues to do so<sup>5</sup>.

1 [WRA 2012, s 4\(1\)\(c\)](#); 2 [s 4\(5\)](#); 3 [s 4\(2\)](#); 4 [s 3\(2\)](#); 5 [s 4\(2\)](#) & [UC Regs, reg 3](#)

## Meaning of “in Great Britain”

C1121 To be “in” a place means to be physically there on the day or period in question. It is not the same as being resident in a place. A person may be resident in a place without being present there<sup>1</sup> and vice versa.

1 [R\(U\) 18/60](#) ; [R\(P\) 02/67](#).

C1122 With regard to any particular day, a person should be regarded as present if they are in GB for part of a day: thus the day when a person arrives in GB and a day when they leave count as days when they are “in” GB.

## Meaning of “Great Britain”

C1123 GB includes<sup>1</sup>

1. England and Wales, and Scotland

**2.** adjacent islands including, Orkney, Shetland, the Hebrides, the Isles of Scilly, the Isle of Wight and Lundy

1 [Union with Scotland Act 1706 preamble & Art 1](#); [Union with England Act 1707 \(Scottish Parliament\), Art 1](#)

C1124 N Ireland<sup>1</sup>, the Isle of Man<sup>2</sup> and the Channel Islands<sup>3</sup> are not part of GB.

1 [R\(S\) 5/85.](#); 2 [CSU 14/48.](#); [R\(U\) 8/81.](#); 3 [R\(P\) 2/64.](#)

C1125 - C1165

# Persons who do not have to satisfy the condition that they be “in GB” C1166 - C1224

[Crown Servants and Members of Her Majesty’s Forces posted overseas](#) C1166 - C1224

## Crown Servants and Members of Her Majesty’s Forces posted overseas

C1166 Crown servants posted overseas and members of Her Majesty’s Forces posted overseas do not have to meet the basic condition that they be “in GB”<sup>1</sup> provided that they<sup>1</sup>

1. are performing overseas the duties of an office or employment as a Crown servant or (as the case may be) as a member of Her Majesty’s Forces **and**
2. were habitually resident in the UK immediately before the first posting (or the first of consecutive postings).

1 [UC Regs, reg 10](#)

C1167 In the case of joint claimants, the partner of a Crown servant posted overseas or a member of Her Majesty’s Forces posted overseas (who, in either case, satisfies the conditions in C1166) also does not have to meet the basic condition that they be “in GB”<sup>1</sup> while they are accompanying that Crown servant or member of Her Majesty’s Forces on that posting.

1 [UC Regs, reg 10\(1\)\(b\)](#)

C1168 Provided the conditions in C1166 are satisfied,

1. Crown servants posted overseas,
2. members of Her Majesty’s Forces posted overseas and, where C1167 is satisfied, their joint claim partners,

do not have to be habitually resident in<sup>1</sup>, and do not need to have a right to reside in<sup>1</sup>, the Common Travel Area.

1 [UC Regs, reg 10\(1\)](#) & [WRA 2012, s 4\(1\)\(c\)](#)

## Meaning of “Crown servant”

C1169 “Crown servant” means<sup>1</sup> a person holding an office or employment under the Crown.

## **Meaning of “Member of Her Majesty’s Forces”**

C1170 A “member of Her Majesty’s forces” means<sup>1</sup>

**1.** a member of the regular forces<sup>1</sup>, namely the Royal Navy, the Royal Marines, the regular army or the Royal Air Force **or**

**2.** a member of the reserve forces<sup>1</sup>, namely the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Regular Reserve, the Royal Air Force Reserve or the Royal Auxiliary Air Force

who is over the age of 16 and who gives full pay service (excluding any such person while absent on desertion).

1 [UC Regs, reg 10\(3\)](#) & [Armed Forces Act 06](#)

C1171 – C1224

## Habitual Residence C1225 - C1278

[\[See Memo ADM 17-23\]](#) [\[See Memo ADM 10-23\]](#) [\[See Memo ADM 01-23\]](#) [\[See Memo ADM 11-22\]](#)  
[\[See Memo ADM 29-20\]](#) [\[See Memo ADM 08-21\]](#) [\[See Memo ADM 14-21\]](#)

C1225 A person who is **not habitually resident** in the CTA (the UK, the Channel Islands, the Isle of Man or the Republic of Ireland) is to be **treated as not being in GB1** and therefore not satisfying one of the basic conditions of entitlement to UC. A person must not be treated as habitually resident in the CTA unless that person has a right to reside, and certain rights to reside do not count (see C1851 to C1898).

**Note:** Croatia acceded to the EU on 1.7.13 and the rights of Croatian nationals to reside in the UK are restricted for an initial period of 5 years (i.e. until 30.6.18). Guidance on how the habitual residence test applies to Croatian nationals can be found at C1925 – C1945

1 [UC Regs, reg 9\(1\)](#)

C1226 – C1278



# Persons with specific rights to reside C1279 - C1402

[Workers C1290 - C1299](#)

[Retaining Worker Status C1300 - C1313](#)

[Self-employed persons C1314 - C1320](#)

[Retaining the status of being a self-employed person C1321 - C1345](#)

[Family Members of Workers and Self-employed persons C1346](#)

[Meaning of “Family Member” C1347 - C1348](#)

[Family Members of British Citizens C1349 - C1360](#)

[Certain Persons with a Permanent Right to Reside in the EEA C1361 - C1375](#)

[Refugees C1376 - C1377](#)

[Discretionary leave C1378 - C1379](#)

[Destitution Domestic Violence concession C1380 - C1383](#)

[Humanitarian Protection C1384](#)

[Continuation of leave C1385 - C1402](#)

C1279 One of the basic conditions of entitlement to UC is that the person is in GB<sup>1</sup> (see C1120 et seq). Consequently an EEA national will meet that UC entitlement condition if they

- 1.** are present in GB **and**
- 2.** have a right to reside that is not excluded<sup>2</sup> (see C1851 et seq) **and**
- 3.** are factually habitually resident in the CTA (see C1946 et seq).

If the EEA national falls within any of the exemptions listed in C1280, they do not have to demonstrate that they are factually habitually resident in the CTA.

C1280 Persons who are determined to have certain specific rights to reside are not subject to the requirement that they be habitually resident in the CTA. These persons are

1. EEA nationals who are “qualified persons” for the purposes of specific legislation<sup>1</sup> as workers (see C1290 - C1291) or a self-employed persons<sup>2</sup> (see C1311 - C1345)
2. a family member within the meaning given in certain regulations<sup>3</sup> of an EEA national who is a qualified person as a worker or self-employed person<sup>4</sup> (see C1346 to C1348)

**Note:** this does not include “extended family members” (see paragraph C1737 et seq)

3. certain persons with a right to reside permanently<sup>5</sup> in the UK by virtue of specific regulations<sup>6</sup> (see C1361 to C1366)
4. a refugee<sup>7</sup> (see C1376 to C1377)
5. a person<sup>8</sup> who

**5.1** has been granted discretionary leave to enter or remain in the UK outside the Immigration Rules (see C1378) **or**

**5.2** has been granted leave to remain outside the Immigration Rules under the Domestic Violence concession (see C1380 to C1383) **or**

**5.3** is deemed to have been granted leave outside the Immigration Rules by virtue of specific legislation which, in accordance with an EU directive provides temporary protection to persons affected when the Council of the EU decides that there is (or will be) a mass influx of displaced persons who cannot return to their country of origin.

**Note** DMs will be notified when the provision in sub-para **5.3** is triggered

6. a person who has humanitarian protection granted under the immigration rules<sup>9</sup> (see C1384)
7. a person who is not a PSIC (see paragraph C1040 et seq) who is in the UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK<sup>10</sup>.

1 [Imm \(EEA\) Regs 2016, reg 6\(1\)](#); 2 [UC Regs, reg 9\(4\)\(a\)](#); 3 [Imm \(EEA\) Regs 2016, reg 7\(1\)\(a\)\(b\) or \(c\)](#);  
4 [UC Regs, reg 9\(4\)\(b\)](#); 5 [UC Regs, reg 9\(4\)\(c\)](#); 6 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(c\), \(d\) & \(e\)](#);  
7 [UC Regs, reg 9\(4\)\(d\)](#); 8 [reg 9\(4\)\(e\)](#); 9 [reg 9\(4\)\(f\)](#); 10 [reg 9\(4\)\(g\)](#)

## Workers

C1290 [[See Memo ADM 33/20](#)] [[See Memo ADM 06/21](#)] An EEA national who is in genuine and effective employment in the UK is a worker for EU purposes<sup>1</sup>. A person who moves from one Member State to another in order to seek work is not a worker for EU regulations<sup>2</sup> and is subject to the habitual residence test (but see C1972).

1 [Imm \(EEA\) Regs 2016, reg 4\(1\)\(a\) & Case C-53/81 D.M. Levin v Staatssecretaris van Justitie](#);

2 [Case C-138/02 Collins v. Secretary of State for Work and Pensions](#)

C1291 However in order for a person to be exercising their EU law rights of free movement as a “worker”, there must be a genuine link between that person and the labour market of the host member state. A worker must be actively pursuing activities as an employed person<sup>1</sup>. Accordingly, before considering the guidance in C1292 - C1293 below about whether the work itself is genuine and effective, DMs should consider the preliminary question of whether the claimant is genuinely exercising their EU rights as a “worker”. In deciding this question, DMs can look at all the circumstances, including the person’s primary motivation in taking up employment and whether, during periods when they were not employed, the person seriously wished to pursue employment by actively looking for work with a genuine chance of being engaged. Thus it is open to DMs to conclude that (for example) a person who does a very brief period of part-time work solely in order to establish a right to reside and thus entitlement to benefit is not exercising their EU rights as a worker.

1 *De Biasi v Secretary of State for the Home Department* [2012] EWCA Civ 1015

### Example

Thijs is a Dutch national. He first came to the UK in 1999 and has resided in the UK ever since. He claimed UC on 2.4.14. The DM established that the only work Thijs had done in the UK was a period of 8 weeks February and March 2014 when he worked as a part-time cleaner for 8 hours per week at an hourly rate of £10 per hour. There was no evidence that he had been self sufficient at any time since 1999, nor that he had genuinely been seeking employment during that period. The DM concluded that Thijs was not a worker and that accordingly he had not retained worker status.

C1292 - C1293

### Genuine and effective work

C1294 [[See Memo ADM 33/20](#)] [[See Memo ADM 06/21](#)] The DM should be satisfied that the work is genuine and effective and is not on such a small scale as to be marginal and ancillary<sup>1</sup>. As the terms “genuine and effective” and “marginal and ancillary” are not defined in EU law, the DM should decide each case on its own merit. The DM should take account of all work done in the UK and consider, amongst other things



1. the period of employment

2. the number of hours worked

3. the level of earnings

4. whether the work was regular or erratic.

In some cases the DM will have to weigh, for example, low hours against long duration of work as part of their overall assessment of whether work is genuine and effective. However, case law does not identify one consistent approach to applying these and other factors: each case must be decided on its own merits.

1  [CH/3314/05.](#),  [CIS/3315/05.](#) paras 21-30; [Case C-357/89 Raulin \(1992\) ECR 1027](#);

### **Example**

An EEA national arrives in the UK and stays with a relative who has a shop. She does not have an offer of a job but helps out in the shop for an hour or two when she can, for which she is paid £20 per week. She claims UC immediately on arrival. The claimant is not a refugee and has not been given exceptional leave to remain in the UK. The DM considers whether the work in the UK was genuine and effective. As she only worked for a few hours a week, in work that was irregular and low paid the DM decides that the work was not genuine and effective because it was on such a small scale as to be marginal and ancillary. The claimant is not a worker.

C1295 Work that is part time or low paid is not necessarily always marginal and ancillary. A part time worker may be considered a worker for EU purposes and retain a right to residence in the UK as long as the work is genuine and effective.

### **Example**

An EEA national who claims UC shows that he has been working for three hours per day, five days per week for the last four months. The DM decides that the work is genuine and effective because it is not on such a small scale as to be marginal and ancillary. The work was on a regular basis continuing for a reasonable length of time.

C1296 – C1299

## **Retaining Worker Status**

### **Temporary illness or accident**

C1300 Workers can retain worker status when they

1. stop working **and**

2. are temporarily unable to work as a result of illness or accident<sup>1</sup>.

**Note 1:** These retained workers are not subject to their right to reside status ending after six months. Their status is retained for as long as the illness, or inability to work due to accident is temporary.

**Note 2:** For retaining the status of being a self-employed person, see C1321.

**Note 3:** The illness or accident which results in a worker being temporarily unable to work must be suffered by that worker<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 6\(2\)\(a\)](#); 2  [CIS/3182/05](#).

### **Involuntary unemployment - Employed in the UK for one year or more**

C1301 Workers retain worker status when they stop working, after having worked as an employee in the UK for **one year or more** provided<sup>1</sup> the person

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective work for **one year or more and**
3. can provide evidence that they are seeking employment.

**Note:** See also C1290 to C1295 for guidance on whether the person was a worker the first place

1 [Imm \(EEA\) Regs 2016, reg 6\(2\)\(b\)](#)

C1302 This group will retain their right to reside as a worker for as long as they are “able and available” to work<sup>1</sup>. As long as claimants are meeting their work-search requirements (see ADM J3050-3052) it should be accepted that they are able and available to work.

1 [Para 47 KH v Bury MBC and SSWP \[2020\] UKUT 50 \(AAC\)](#)

### **Involuntary unemployment - Employed in the UK for less than one year**

C1303 ADM C1301-C1302 sets out the conditions for a right to reside as a worker who retains worker status after having worked as an employee for one year or more and then becomes involuntarily unemployed. This paragraph sets out the conditions for a right to reside as a worker who retains worker status after having worked as an employee in the UK for **less than one year**. A person who<sup>1</sup>

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective employment for **less than one year and**
3. can provide evidence that they are seeking employment.

will only retain worker status for a maximum of 6 months starting with the first day of duly recorded involuntary unemployment<sup>2</sup>.

**Note:** this paragraph should be read in conjunction with ADM C1304 below.

1 [Imm \(EEA\) Regs 2016, reg 6\(2\)\(c\)](#); 2 [reg 6\(3\)](#)

C1304 This group will cease to have a right to reside as retained workers after 6 months and will require an alternative right to reside to retain entitlement to UC (See ADM C1312)

## **Vocational Training**

C1305 Workers can retain worker status when they

1. are involuntarily unemployed and have embarked on vocational training<sup>1</sup> **or**
2. have voluntarily ceased working and have embarked on vocational training that is related to the person's previous employment<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 6\(2\)\(d\)](#); 2 [reg 6\(2\)\(e\)](#)

## **Involuntary unemployment**

C1306 ADM C1301 to C1304 set out the conditions which need to be satisfied for a person to retain their worker status<sup>1</sup>. These conditions are that

1. the claimant must be in involuntary unemployment **and**
2. the involuntary unemployment must be duly recorded **and**
3. the claimant must have registered as a jobseeker with the relevant employment office **and**
4. the claimant can provide evidence that they are seeking employment.


1 [Imm \(EEA\) Regs 2016, reg 6\(2\)\(b\) & \(c\)](#); [Directive 2004/38/EC, Art. 7\(3\)\(b\)](#)

## **The meaning of “involuntary unemployment”**

C1307 The concept of involuntary unemployment is interpreted as meaning that the person retains a link with the labour market<sup>1</sup>. That is determined by having regard to

1. the reasons why the previous employment ended **and**
2. the person's intention **and**
3. the person's activities after leaving their employment.

**Note:** The reasons why the previous employment ended are relevant considerations as to whether or not the claimant is genuinely still in the labour market, but those reasons are not necessarily the determining factor. They provide the context for a person's activities after they have left their employment<sup>2</sup>.

1 [R\(IS\)12/98; Case C-413/01 Ninni-Orasche \[2003\] ECR I-13217](#); 2  [CIS/3315/05 & CIS/2423/09](#).

## Undue delay

C1308 Consideration should be given to the timeliness within which the conditions for retaining worker status are satisfied and whether there has been any undue delay between the end of employment and the claim to UC. In order to retain worker status, the claimant must act promptly and without undue delay<sup>1</sup>.

1 [CIS/2423/09](#).

C1309 Where there is a delay of more than a few days between the end of employment and the making of a claim to UC, the DM should make enquiries into the reasons for, and circumstances of, any delay. What the claimant did between the ending of employment and their claim to UC, will be determining factors as to whether there are reasonable grounds for the delay, such that it is not right to regard it as an undue delay. It follows that the longer the delay, the more compelling the reasons must be for it.

## Example

Maria, a Spanish national, has been working for her employer for 14 months, working set shift patterns. Following a change to her shift patterns, Maria now has difficulty with travel arrangements for the late shift. Maria's employer will not let her deviate from the new shift pattern, stating that she must work the same shifts as her colleagues. Maria gives her notice and looks for work closer to home whilst she is working her notice. Once her employment ceases, Maria does not claim UC immediately, although she continues to look for work, contacting prospective employers. After a month, Maria claims UC. The DM determines that

- Maria's employment ended due to a change in her shift pattern which was outside Maria's control and
- Maria's intention was to find another job and that she had commenced looking for alternative work whilst working her notice and
- Once her employment ceased, Maria continued looking for work, contacting prospective employers.

When the DM considers the one month delay in Maria's claim to UC, Maria explains that she had not claimed UC immediately after ceasing employment because she was confident of getting another job quickly. She had provisionally been offered a job which was due to start the day before she made her claim to UC, but at the last minute, the job had fallen through. Maria produced a letter from the company giving details of why the job was no longer available. The DM determines that there are reasonable grounds for the delay and that Maria remained in the labour market between the ending of her

employment and the date of making her claim to UC. Consequently Maria retains her worker status.

### **Work search requirement**

C1310 The claimant is required to comply with their work search requirement for each week of their UC claim. This means taking steps that the claimant can reasonably be expected to take, to give them the best chance of getting employment. The requirement to have a chance of being engaged requires a degree of looking forward over a foreseeable period, on the balance of probability. However, it should also be borne in mind that, during any forward-looking period, there will still be the requirement for the claimant to comply with their work search requirement each week in relation to any continued payments of their UC claim.

### **Alternative right to reside**

C1311 As per ADM C1304, some claimants may need to show an alternative right to reside after 6 months in order to retain entitlement to UC. Where the claimant is exercising an alternative right to reside, they are advised to provide supporting evidence.

C1312 Alternative rights to reside may include

1. self-sufficient persons with comprehensive sickness insurance (ADM C1728 to C1730) or
2. self-sufficient students with comprehensive sickness insurance (ADM C1732 to C1734) or
3. family members (ADM C1735) of
  - 3.1 a qualified person (ADM C1710) or
  - 3.2 a British Citizen (if certain conditions are satisfied) (ADM C1599 to C1602) or
  - 3.3 a student (ADM C1732 et seq) or
  - 3.4 an EEA national with a permanent right of residence (ADM C1751) or
4. family members who retain their right of residence (ADM C1778) or
5. extended family members (ADM C1738) or
6. permanent rights of residence (ADM 1750 et seq) or
7. derivative rights of residence (ADM C1827 et seq).

This is not an exhaustive list.

C1313 Supporting evidence could include:

1. job contracts



2. letters from employers
3. evidence of permanent residence, which may include evidence of
  - 3.1 5 years as a qualified person
  - 3.2 certified accounts, tax returns or HMRC registration (S/E people)
  - 3.3 evidence of previous work
  - 3.4 P45s
  - 3.5 study and comprehensive sickness insurance (Students)
  - 3.6 self-sufficiency and comprehensive sickness insurance
  - 3.7 Worker Registration and Worker Authorisation documents (Accession state nationals)
4. evidence of a derivative right to reside e.g. evidence of a child in general education (ADM C1832 2.3), evidence that the child's EEA national parent was working in the UK whilst the child resided in the UK (ADM C1832 2.2)
5. evidence of the claimant's nationality (where this is not already held).

This is not an exhaustive list.

## **Self-employed persons**

C1314 In the context of EU rights to reside it is the EU law meaning of self-employed that has to be applied. EU law distinguishes between “workers” (who are persons who perform “services for and under the direction of another person in return for which he receives remuneration”<sup>1</sup>) and self-employed (who are “independent providers of services who are not in a relationship of subordination with the person who receives the services”<sup>2</sup>). The CJEU has also stated<sup>3</sup> that the following three factors are characteristic of self-employment

- 1.** there is no relationship of subordination concerning the choice of activity, working conditions and conditions of remuneration
- 2.** the activity is engaged under the person's own responsibility
- 3.** the remuneration is paid in full to the person so engaged directly

In addition self-employed earners derive their right to move and reside from article 49 of the TFEU rather than article 45 which applies to workers.

1 Case C-357/89 Raulin v Minister Van Onderwijs en Wetenschappen;

C1315 Questions may arise as to whether at any particular moment in time a claimant is a self-employed person. An Upper Tribunal Judge has said this<sup>1</sup>

“I do not accept that a claimant who is for the moment doing no work is necessarily no longer self-employed. There will commonly be periods in a person’s self-employment when no work is done. Weekends and holiday periods are obvious examples. There may also be periods when there is no work to do. The concept of self-employment encompasses periods of both feast and famine. During the latter, the person may be engaged in a variety of tasks that are properly seen as part of continuing self-employment: administrative work, such as maintaining the accounts; in marketing to generate more work; or developing the business in new directions. Self-employment is not confined to periods of actual work. It includes natural periods of rest and the vicissitudes of business life. This does not mean that self-employment survives regardless of how little work arrives. It does mean that the issue can only be decided in the context of the facts at any particular time. The amount of work is one factor. Whether the claimant is taking any other steps in the course of self-employment is also relevant. The claimant’s motives and intentions must also be taken into account, although they will not necessarily be decisive.”

[1 SSWP v JS \[2010\] UKUT 240 \(AAC\)](#)

C1316 DMs will have to arrive at a judgement based on all the facts of the case in accordance with this guidance

C1317 [\[See Memo ADM 33/20\]](#) [\[See Memo ADM 06/21\]](#) Self-employment must also satisfy the condition that the work involved be genuine and effective (see para C1294).

C1318 Unless Tier 1 of the MET (see C1487) is satisfied to establish that the self-employed work is genuine and effective, the DM should consider all the circumstances of each particular case. Factors to consider may include

1. periods of actual work
2. monies received for such work
3. administration tasks relating to the business
4. maintaining accounts
5. marketing work to generate more work
6. development of business in new directions
7. receipts for tools, stock or materials purchased

This is not an exhaustive list.

C1319 A person must have more than an intention to be self-employed. They must provide evidence of the steps taken, or the ways used to set up their self-employment<sup>1</sup>.

1 [R\(IS\) 06/00](#).

C1320 It helps to have registered with HMRC as a self-employed person. However, a person not registered with HMRC does not necessarily mean that they are not self-employed. Registration with HMRC may be one of the factors towards establishing that the person has self-employed status. However that registration should link to genuine and effective work (see C1294).

## **Retaining the status of being a self-employed person**

C1321 A self-employed person retains that status if he is unable to work temporarily as a result of an illness or accident<sup>1</sup>.

Note: the illness or accident which results in a self-employed person being temporarily unable to work must be suffered by that self-employed person.

1 [Imm \(EEA\) Regs 2016, reg 6\(4\)](#); R (on the application of Marian Tilianu) v Social Fund Inspector and SSWP [2010] EWCA Civ 1397

C1322 A person who is no longer in self-employment continues to be treated as a self-employed person<sup>1</sup> provided that person

1. is in duly recorded involuntary unemployment after having worked as a self-employed person in the UK for at least one year<sup>2</sup> provided the person

1.1 has registered as a jobseeker with the relevant employment office and

1.2 satisfies condition D (C1323) and condition E (C1324) or

2. is in duly recorded involuntary unemployment after having worked as a self-employed person in the UK for less than one year<sup>3</sup> provided the person

2.1 has registered as a jobseeker with the relevant employment office and

2.2 satisfies condition D (C1323) and condition E (C1324) or

3. is involuntarily no longer in self-employment and has embarked on vocational training<sup>4</sup> or

4. has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation<sup>5</sup>.

Note: A person to who sub-paragraph 2. applies, only retains their status as a self-employed person for a maximum of six months<sup>6</sup>.

1 Florea Gusa (case C-442/16); [Imm \(EEA\) Regs 2016, reg 6\(4\)](#); 2 [reg 6\(4\)\(b\)](#); 3 [reg 6\(4\)\(c\)](#);  
4 [reg 6\(4\)\(d\)](#); 5 [reg 6\(4\)\(e\)](#); 6 [reg 6\(4A\)](#)

### **Condition D**

C1323 Condition D<sup>1</sup> is that the person

1. entered the UK as a self-employed person, or in order to seek self-employment or
2. is present in the UK seeking employment or self-employment, immediately after enjoying a right to reside as a self-employed person; a self-sufficient person; or a student (disregarding any period during which self-employed status was retained pursuant to paragraphs C1322 1. or C1322 2.

1 [Imm \(EEA\) Regs 2016, reg 6\(4B\)](#)

### **Condition E**

C1324 Condition E<sup>1</sup> is that the person provides evidence of seeking employment or self-employment.

1 [Imm \(EEA\) Regs 2016, reg 6\(4C\)](#)

C1325 Like those retaining worker status (ADM C1301-1304) those retaining their status as self-employed workers due to involuntary unemployment, will fall into one of two cohorts, and will either retain that status for a period of no less than 6-months, before requiring an alternative right to reside, or they will retain their status for as long as they show they are 'able and available' to work.

C1326 – C1345

## **Family Members of Workers and Self-employed persons**

C1346 Family members (see C1347) of EEA nationals who are workers or self-employed persons have the same rights of residence as those persons and are entitled to reside in the UK for as long as they remain family members<sup>1</sup>. This includes the family members of EEA nationals who retain worker status (see C1300 & C1302) or retain the status of self-employed person (see C1321).

1 [Imm \(EEA\) Regs 2016, reg 14\(1\) & \(2\)](#)

## **Meaning of “Family Member”**

C1347 The following are family members

**1.** a spouse (husband or wife) or civil partner<sup>1</sup>;

**2.** direct descendants of the EEA national, or of the EEA national's spouse or civil partner, who are<sup>2</sup>

**2.1** under the age of 21 or

**2.2** dependants of the EEA national or the EEA national's spouse or civil partner

**3.** dependent direct ascendant relatives of the EEA national, the EEA national's spouse or civil partner<sup>3</sup>.

**Note:** If certain conditions are met, family members of British citizens have the same EU law rights to reside as they would if they were a family member of another EEA state<sup>4</sup> (see ADM C1349 et seq for the full conditions). Thus where the conditions are satisfied and the British citizen would fall within the terms of ADM C1280 **1.** and if they were a national of another EEA state, their family members should be treated in the same way as a family member described in ADM 1280 **2.** .

1 [Imm \(EEA\) Regs 2016, reg 7\(1\)\(a\)](#); 2 [reg 7\(1\)\(b\)](#); 3 [reg 7\(1\)\(c\)](#); 4 [reg 9](#)

### **Meaning of “dependent”**

C1348 Direct descendants aged 21 or over (see C1347 **2.2**) and any relatives in the ascending family line (see C1347 **3.**) must prove they are dependent on the EEA national or his spouse or civil partner. A UT Judge has analysed the EU case law on the meaning of “dependent” in this context. He summarised that case law<sup>1</sup> as finding that<sup>2</sup>

**1.** a person is only dependent who actually receives support from another

**2.** there need be no right to that support and it is irrelevant that there are alternative sources of support available

**3.** that support must be material<sup>3</sup>, although not necessarily financial, and must provide for, or contribute towards the basic necessities of life.

1 [Case C-316/85, Centre Public D'Aide Sociale de Courcelles v Lebon](#); [Case C-200/02, Chen v Secretary of State for the Home Department](#); [Case C-1/05, Jia v Migrationsverket](#); 2 [CIS/2100/07](#);  
3 [C-423/12 Reyes](#)

### **Family Members of British Citizens**

C1349 With effect from 25.11.16, a person who is a family member (as defined in C1347) of a British citizen (BC) has the same rights to reside in the UK as if they were the family member of a national of any other EEA state (except Croatia – on which see C1925 et seq), provided that the following conditions are satisfied<sup>1</sup>

**1.** the BC

**1.1** was residing in an EEA state (other than the UK) as a worker, S/E person, self-sufficient person or student immediately before returning to the UK **or**

**1.2** had acquired a right of permanent residence in an EEA state **and**

**2.** the family member and BC resided together in the EEA state **and**

**3.** the family member and BC's residence in the EEA state was genuine.

**Note:** For the purposes of **1.2**, the BC is only to be treated as having acquired the right of permanent residence in the EEA state<sup>2</sup>, if such residence would have led to the acquisition of the right of permanent residence<sup>3</sup>, had it taken place in the UK.

[1 Imm \(EEA\) Regs 2016, reg 9\(2\); O&B \(C-456/12\); 2 Imm \(EEA\) Regs 2016, reg 9\(6\); 3 reg 15](#)

C1350 With effect from 25.11.16, factors that are relevant to whether residence in an EEA state (other than the UK) is or was genuine include<sup>1</sup>

**1.** whether the centre of the BC's life transferred to the EEA state **and**

**2.** length of the family member and BC's joint residence in the EEA state **and**

**3.** the nature and quality of the family member and BC's accommodation in the EEA state and whether it is or was the BC's principal residence **and**

**4.** the degree of the family member and BC's integration in the EEA state **and**

**5.** whether the family member's first lawful residence in the EU with the BC was in an EEA state.

[1 Imm \(EEA\) Regs 2016, reg 9\(3\)](#)

C1351 There is no application<sup>1</sup> of the regulation in the circumstances where

**1.** the purpose of the residence of the BC in the other EEA state was as a means to circumvent any immigration laws<sup>2</sup> applicable to any non-EEA family members to have leave to enter or remain in the UK **or**

**2.** a person is only eligible to be treated as a family member as a result of being an extended family member<sup>3</sup> (see C1737).

[1 Imm \(EEA\) Regs 2016, reg 9\(4\); 2 Immigration Act 1971; 3 Imm \(EEA\) Regs 2016, reg 7\(3\)](#)

C1352 Where it is necessary to treat a BC as though the BC were an EEA national<sup>1</sup>, for the purposes of determining whether the BC would be a qualified person<sup>2</sup> (see C1710)

- 1.** any requirement to have comprehensive sickness insurance (see C1728 – C1730 and C1734) cover in the UK still applies, except that cover is not required to extend to the BC **or**
- 2.** in assessing whether the BC can continue to be treated as a retained worker<sup>3</sup>, the BC is not required to satisfy condition A<sup>4</sup> (see C1405) **or**
- 3.** in assessing whether the BC can be treated as a jobseeker<sup>2</sup>, the BC is not required to satisfy condition A<sup>4</sup> and where relevant, condition C<sup>5</sup>.

1 [Imm \(EEA\) Regs 2016, reg 9\(7\)](#); 2 [reg 6\(1\)](#); 3 [reg 6\(2\)\(b\) or \(c\)](#); 4 [reg 6\(5\)](#); 5 [reg 6\(9\)](#)

### **Transitory provisions**

C1353 For the purposes of C1349 to C1352, any application made under the Imm (EEA) Regs 2006 between 25.11.16 and 1.2.17 for

- 1.** an EEA family permit **or**
- 2.** a registration certificate **or**
- 3.** a residence card **or**
- 4.** a document certifying permanent residence **or**
- 5.** a permanent residence card **or**
- 6.** a derivative residence card

made but not determined before 25.11.16, is to be treated as having been made under the Imm (EEA) Regs 2006<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 44 & Sch 5, para 2](#)

C1354 – C1360

## **Certain Persons with a Permanent Right to Reside in the EEA**

### **Worker or Self-employed person who has ceased activity**

C1361 EEA nationals who are workers<sup>5</sup> or self-employed persons who have ceased activity in the circumstances described in paragraphs C1362 to C1366 below and their family members (as defined in paragraph C1347) acquire a permanent right to reside in the host Member State<sup>1</sup>. Such a person is not

required to be habitually resident in CTA<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(c\), \(d\) & \(e\)](#); 2 [UC Regs, reg 9\(4\)\(c\)](#)

## Retirement

C1362 A person is a worker or self-employed person who has ceased activity if that person<sup>1</sup>-

**1.** stops working **and**

**2.** either

**2.1** has reached the age at which he is entitled to a state pension on the day they stop work **or**

**2.2** in the case of a worker, has taken early retirement **and**

**3.** was working in the UK for at least 12 months before stopping (but see note) **and**

**4.** resided in the UK continuously for more than three years before stopping work (but see note)

**Note:** Where the spouse or civil partner of the worker or S/E person is a British citizen, the conditions in subparagraphs **3** and **4** above on length of residence or time working will not apply<sup>2</sup>

1 [Imm \(EEA\) Regs 2016, reg 5\(2\)](#); 2 [reg 5\(6\)](#)

## Permanent Incapacity

C1363 A person is a worker or self-employed person who has ceased activity if that person<sup>1</sup>

**1.** stops working as a result of a permanent incapacity for work **and**

**2.** either

**2.1** except where the person is the spouse or civil partner of a British citizen<sup>2</sup>, resided in the UK continuously for 2 years prior to stopping work **or**

**2.2** the permanent incapacity is the result of an accident at work or an occupational disease that entitles them to a pension payable (in full or in part) by a UK institution.

1 [Imm \(EEA\) Regs 2016, reg 5\(3\)](#); 2 [reg 5\(6\)](#)

## Working Abroad but Place of residence retained in the UK

C1364 A person is a worker or self-employed person who has ceased activity where they<sup>1</sup>

**1.** are working in employment or as a self-employed person in an EEA state other than the UK but retain a place of residence in the UK to which they return at least once a week **and**



2. before that work started, had been continuously resident and continuously active as a worker or self-employed person in the UK for at least 3 years.

1 [Imm \(EEA\) Regs 2016, reg 5\(4\)](#)

### **Periods treated as periods of working**

C1365 In calculating periods when the person was working for the purposes of paragraphs C1362 to C1364, the following periods are included as periods of work<sup>1</sup>

1. periods of inactivity not of the person's own making **and**

2. periods of inactivity due to illness or accident **and**

3. in the case of

**3.1.** a worker, periods of involuntary unemployment duly recorded by the relevant employment office except where subparagraph **3.2** applies,

**3.2.** A8 nationals who were required to register as a worker as at 30.4.11. periods of involuntary unemployment duly recorded by the relevant employment office but only where<sup>2</sup>

**3.2.a.** they ceased working during the first month of registered employment, for the remainder of that month **and**

**3.2.b** the accession worker became unemployed or ceased work on or after 1.5.11.

1 [Imm \(EEA\) Regs 2016, reg 5\(7\)](#); 2

[Imm \(EEA\) Regs 2006, reg 7A\(3\)](#)

### **Family Member of Worker who has died**

C1366 A person who was a family member (within the meaning given in paragraph C1347) of a worker or self-employed person acquires a permanent right to reside where<sup>1</sup>

1. the worker or self-employed person has died **and**

2. the family member resided with the worker or self-employed person immediately before their death **and**

3. **either** the worker or self-employed person

**3.1** had resided continuously in the UK for at least 2 years immediately before they died **or**

**3.2** the death was as a result of an accident at work or an occupational disease

Such a person is not required to be habitually resident in the CTA for UC purposes<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(e\)](#); 2 [UC Regs, reg 9\(4\)\(c\)](#)

C1367 – C1375

## Refugees

C1376 Refugees<sup>1</sup> are people who are outside their country of origin and are unwilling to return there for fear of persecution because of their

- race
- religion
- nationality
- political opinion
- membership of a social group.

1 [Convention relating to the Status of Refugees, Art. 1](#) (as extended)

C1377 People recognized as refugees by the Immigration and Nationality Directorate are granted asylum. From 30 August 2005 they will have been granted limited leave to enter or remain for five years, rather than indefinite leave. Spouses, recognized civil partners, and dependent children under the age of 18 are normally allowed to join a refugee in the UK immediately, and are also granted asylum. Refugees, their spouses or recognized civil partners and dependants who are granted asylum are not subject to the habitual residence test<sup>1</sup>.

1 [UC Regs, reg 9\(4\)\(d\)](#)

## Discretionary leave

C1378 The HO may alternatively grant discretionary leave outside the immigration rules.

C1379 Humanitarian protection and discretionary leave replaced exceptional leave to enter or remain from 1 April 2003 but there will still be residual cases of exceptional leave to 2007. Whereas indefinite leave to remain gave a right to permanent residence, limited leave, humanitarian protection, discretionary leave and exceptional leave do not guarantee that right.

The HO may refer to

**1.** limited leave given to refugees **or**

2. exceptional leave to remain **or**
3. leave to remain on an exceptional basis **or**
4. humanitarian protection **or**
5. discretionary leave.

A claimant given one of the above is not subject to the habitual residence test<sup>1</sup> for as long as the leave lasts, including periods when he/she has applied in time for an extension of leave.

1 [UC Regs, reg 9\(4\)\(e\) & \(f\)](#)

## **Destitution Domestic Violence concession**

C1380 Since 1.4.12, individuals who came to the UK or were granted leave to stay in the UK as the spouse or partner of

1. a British citizen **or**
2. someone settled in the UK

and whose relationship has broken down due to domestic violence have been able to apply to the Home Office for limited leave to remain (granted outside the Immigration Rules) pending consideration of an application for indefinite leave to remain.

C1381 The Home Office consider whether:

1. the applicant entered the UK or was given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present and settled in the UK **and**
2. the relationship has broken down due to domestic violence **and**
3. they do not have the means to access accommodation or to support themselves and need financial help **and**
4. they will apply to stay permanently in the UK under the Destitution Domestic Violence immigration rule<sup>1</sup>.

If the Home Office accepts that someone satisfies **all 4** of the conditions above it will issue the applicant with letters notifying the start and end date for 3 months limited leave to remain in the UK. During this 3 month period the claimant must apply to stay permanently under the Domestic Violence immigration rule<sup>1</sup>.

1 [Immigration Rules](#), rule 289B

C1382 If the person has made an application to stay permanently within the 3 month period but the Home Office has not yet made a decision by the end of the 3 month period, the period of limited leave under the Destitution Domestic Violence concession continues until the final decision is made. In these circumstances (i.e. where an application has been made within the 3 month period but the Home Office has not made a decision within that 3 month period) where the final decision is a refusal to grant indefinite leave to remain, the limited leave continues for a further 10 days after the Home Office decision is sent to the applicant.

C1383 During any period when a person has limited leave under the Destitution Domestic Violence concession (including the periods of extension described in paragraph 8 above), that person does not have to satisfy the requirement that they be habitually resident in the CTA<sup>1</sup> and therefore (provided they satisfy the other conditions of entitlement) will be eligible for UC.

1 [UC Regs, reg 9\(1\) & \(4\)\(e\)\(ii\)](#)

## **Humanitarian Protection**

C1384 The HO may grant humanitarian protection within the immigration rules to persons who have not been recognised as refugees but who are considered likely to face serious harm in their country of origin. As with refugees the family members of a person granted humanitarian protection are allowed to join that person and are granted the same leave. Under EU law common criteria for the identification of persons genuinely in need of international protection are applied across EU Member States<sup>1</sup>. A new category of protection is introduced, known as subsidiary protection, which is aligned with the present category of humanitarian protection. Persons granted humanitarian protection within the immigration rules do not have to satisfy the habitual residence test<sup>2</sup>.

1 [Directive 2004/83/EC](#); 2 [UC Regs, reg 9\(4\)\(f\)](#)

## **Continuation of leave**

C1385 Where a person has a limited period of leave to remain in the UK and they make a timeous application (i.e. before their existing leave to remain expires) to the HO to have their leave extended, the person's existing leave continues until the HO has made a decision on the application (or until the application is withdrawn)<sup>1</sup>. If the application to extend the leave period is made after the applicant's current leave has expired, the applicant's leave period is not extended and the person is treated as an 'overstayer'.

1 [Immigration Act 1971, s 3C](#)

C1386 – C1402



# Genuine Prospect of Work (GPoW) C1403 - C1479

## Introduction C1403 - C1405

### Introduction

C1403 For the purposes of UC, the Genuine Prospect of Work test (GPOW test) no longer exists from 14.02.20. Initially GPOW tests were carried on EEA Nationals classified as Jobseekers or those retaining worker status due to involuntary unemployment after 6 months. From 10.6.15 GPOWs were only carried out on this later group. However, the finding of the UT<sup>1</sup> was that the requirement in domestic legislation<sup>2</sup> for these claimants to show that they had a genuine chance of being engaged fell outside what the relevant EU legislation<sup>3</sup> allowed for.

1 [KH v Bury MBC and SSWP \[2020\] UKUT 50 \(AAC\)](#);

2 [Imm \(EEA\) Regs 2016, regs 6\(2\)\(b\) & \(c\)](#); 3 [Directive 2004/38/EC, Art. 7\(3\)\(b\)](#)

C1404 Only claimants who are classified as jobseekers are required to show they have a genuine chance of being engaged in order to retain their right to reside as a worker. As those classified as jobseekers are no longer able to make a claim to UC, there are no longer any UC claimants who would be subject to a GPOW.

### Jobseekers

C1405 [[See Memo ADM 29/20](#)][[See Memo ADM 30/20](#)] [[See Memo ADM 07/21](#)][[See Memo ADM 08/21](#)][[See Memo ADM 19/21](#)] Guidance at ADM C1711 explains a jobseeker's right to reside. With effect from 1.1.14, the definition of a jobseeker<sup>1</sup> is a person who

1. either

**1.1** entered the UK in order to seek employment<sup>2</sup> **or**

**1.2** is present in the UK and seeking employment immediately after having a right to reside as a worker, self-employed person, a self sufficient person or a student<sup>3</sup> **and**

**2.** can provide evidence that they are seeking employment and have a genuine chance of being engaged<sup>4</sup>.

**Note 1:** a "worker" within **1.2** does not include a person retaining worker status under specified legislation<sup>5</sup>.

**Note 2:** From 10.6.15, EEA nationals whose only right to reside is as a 'jobseeker' are not entitled to claim UC (see ADM C1854 et seq).

1 [Imm \(EEA\) Regs 2016, reg 6\(1\)](#); 2 [reg 6\(5\)\(a\)](#); 3 [reg 6\(5\)\(b\)](#); 4 [reg 6\(6\)](#); 5 [reg 6\(2\)\(c\)](#)

C1406 - C1479

# Minimum Earnings Threshold C1480 - C1509

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## Introduction

C1480 Persons with certain specific rights to reside are not subject to the requirement that they be habitually resident in the CTA<sup>1</sup>.

[1 UC Regs, reg 9\(1\)](#)

C1481 Amongst this group are EEA nationals who are

**1.** workers (ADM C1290) **or**

**2.** persons who retain their worker status (ADM C1300) because

**2.1** they are in duly recorded involuntary unemployment after having been employed in the UK, as long as they have registered as a jobseeker with the relevant employment office **or**

**2.2** work as an employee in the UK has stopped because the person is temporarily unable to work due to illness or accident **or**

**3.** self-employed persons (ADM C1451) **or**

**4.** persons who retain the status of self-employed person (ADM C1475) because they are temporarily unable to pursue their activities as a self-employed person as a result of illness or accident<sup>1</sup>

and family members (ADM C1596 et seq) of persons described in **1.** to **4.** above<sup>2</sup>.



**Note:** the following guidance is to provide more detailed advice on the criteria for deciding whether a person is or was a ‘worker’ or a ‘self-employed person’.

1 [UC Regs, reg 9\(4\)\(a\)](#); 2 [reg 9\(4\)\(b\)](#)

C1482 – C1483

## Meaning of ‘worker’ – two tier approach

C1484 It is well established in EU law that, in order to be a worker or self-employed, the person must be doing work which is genuine and effective and is not on such a small scale as to be marginal and ancillary<sup>1</sup>. In order to clarify the position for DMs the Department has decided to apply a Minimum Earnings Threshold, as part of a two tier process.

**Tier 1:** whether the Minimum Earnings Threshold has been met for a required period **and**

**Tier 2:** in cases where the Minimum Earnings Threshold criteria have not been met, whether the EEA national was in genuine and effective work assessed against a set of secondary criteria.

1 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie

C1485 – C1486

## Tier 1 – Minimum Earnings Threshold

C1487 An EEA national who has worked as an employee or in a self-employed capacity will be automatically considered as a worker or self-employed person for the purposes of EU law if

**1.** their average gross earnings from employment or self-employment in the UK were more than £646 pcm (£149 a week) in 2013/14, and or £663 pcm (£153 a week) in 2014/15, and or £672 pcm (£155 a week) in 2015/16 or 2016/17 and or £681 pcm (£157 a week) in 2017/18 **and**

**2.** the gross earnings were at or above that level for a continuous period of 3 months immediately before the date from which UC has been claimed.

If these conditions are met, DMs should accept that the work activity was genuine and effective and that while the work was done, the EEA national had worker or self-employed status, as appropriate, in EU law. In this case, there is no need to apply the Tier 2 assessment.

**Note:** The level of the Minimum Earnings Threshold is linked to the level of the HMRC Primary Earnings Threshold (PET), which is the point at which employees must pay Class 1 National Insurance Contributions (NICs) (see the Appendix to ADM Chapter H3). Self-employed persons have to pay Class 2 and Class 4 NICs around this point too. As the PET level is usually updated every April, DMs should ensure that they use the PET level relevant to the 3 month period of earnings under consideration. Where this period spans the April PET updating, DMs should use the pre-updating PET rate for the entire 3 month

period.

C1488

## **Tier 2 – Minimum Earnings Threshold criteria not met**

C1489 In all cases where an EEA national's average gross earnings from employment or self-employment fall below the Minimum Earnings Threshold and/or their earnings have not been at or above that level for a continuous period of 3 months, the DM will need to examine each case as a whole. The DM will need to take account of all the circumstances, to determine whether the EEA national's activity was genuine and effective, and not marginal and ancillary and decide whether the person is or was a worker or self-employed person, applying the guidance set out below.

C1490

## **Deciding if a person is/was a 'worker' – factors to take into account**

C1491 Article 45 of the Treaty on the Functioning of the European Union (TFEU) says that freedom of movement for workers shall be secured within the EU and specified legislation<sup>1</sup> defines 'worker' as meaning a worker within the meaning of Article 45 of the TFEU (see ADM C1360 – C1361).

1 [Imm \(EEA\) Regs 2016, reg 4\(1\)\(a\)](#)

C1492 The following principles can be derived from EU case law

- 1.** the term 'worker' has an EU law meaning<sup>1</sup> and may not be interpreted restrictively<sup>2</sup>
- 2.** the term 'worker' applies to employees rather than the self-employed. In EU law terms the essential characteristics of an employment relationship is that a person performs services for and under the direction of another person in return for which he receives remuneration<sup>3</sup>
- 3.** in deciding whether a person is a 'worker', account should be taken of all the occupational activities the person has undertaken in the host member state<sup>3</sup>
- 4.** a person working part-time can be a 'worker' provided that the work undertaken is genuine and effective, but not where activities are on such a small scale as to be regarded as purely marginal and ancillary<sup>4</sup>
- 5.** as a 'worker' must receive remuneration, unpaid voluntary activity is not 'work'<sup>5</sup>
- 6.** the mere fact that there is a legally binding employment relationship is not of itself conclusive of whether the employee is a 'worker'<sup>6</sup>
- 7.** as long as the work is 'genuine and effective' it is irrelevant whether it yields an income lower than the

amount considered the minimum required for subsistence in the host Member State<sup>7</sup> (in the case of the UK, the relevant applicable amount for UC)

**8.** the fact that the person seeks to supplement the remuneration from his work by means of financial assistance drawn from public funds does not preclude him from being regarded as a ‘worker’<sup>8</sup>

**9.** once it has been established that the person is genuinely exercising his right of free movement as a ‘worker’, the motives which have prompted the worker to work in another Member State are irrelevant<sup>9</sup> provided the work is genuine and effective

**10.** a person employed under an ‘on-call’ or ‘zero-hour’ contract is not precluded from being a worker provided the work is genuine and effective<sup>10</sup>

**11.** an employee undertaking genuine and effective work is a worker, even if the person is employed under a contract that is performed illegally<sup>11</sup>

**12.** a Commissioner has held that a claimant’s physical incapacity to do the work she had undertaken and the fact that she had been dismissed from it after a short period were irrelevant to the issue of whether the work was genuine and effective<sup>12</sup>.

1 Case C-75/63 Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten;

2 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie; 3 Case C-357/89 Raulin (1992) ECR 1027

4 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie (para 17); 5 CIS/868/08 & CIS/1837/06;

6 Case C-344/87 Bettray v Staatssecretaris van Justitie;

7 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie;

8 Case C-139/85 Kempf v Staatssecretaris van Justitie;

9 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie (para 23);

10 Case C-357/89 Raulin (1992) ECR 1027; 11 JA v SSWP (ESA) [2012] UKUT 122 (AAC), CE/2190/11;

12 CSIS/467/07

C1493 Where the Minimum Earnings Threshold is not met, the DM will need to consider two questions

**1.** is the person exercising their EU freedom of movement rights as a “worker” (see ADM C1495 - C1496)  
**and**

**2.** is the work ‘genuine and effective’ (see ADM C1498 to C1499).

C1494

## **Is the person exercising their rights as a worker**

C1495 In order for a person to be exercising their EU law rights of free movement as a “worker”, there must be a real link between that person and the labour market of the host Member State (see ADM

C1361). A worker must be actually pursuing activities as an employed person or seriously wish to pursue activities as an employed person<sup>1</sup>. Accordingly, before considering the guidance below about whether the work itself is genuine and effective, DMs may consider the preliminary question of whether the claimant is genuinely exercising their EU rights as a 'worker'.

1 MDB (Italy) v Secretary of State for the Home Department [2012] EWCA Civ 1015

C1496 In deciding this question, DMs can look at all the circumstances, including the person's primary motivation in taking up employment and whether, during periods when they were not employed, the person seriously wished to pursue employment by actively looking for work with a genuine chance of being engaged<sup>1</sup>.

**Note:** if a person is exercising their EU rights, their conduct before and after periods of employment (including their primary motivation) are not relevant when considering whether work is genuine and effective (see ADM C1498 – C1499).

1 MDB (Italy) v Secretary of State for the Home Department [2012] EWCA Civ 1015

C1497

## **Genuine and Effective Work**

C1498 Provided the DM is satisfied that the claimant is in fact exercising his rights as a worker in accordance with ADM C1495 – C1496, the DM can then consider whether the work is genuine and effective and not marginal or ancillary (see ADM C1362).

C1499 When determining whether or not someone is a worker, the following can be relevant considerations:

- 1.** whether work was regular or intermittent
- 2.** the period of employment
- 3.** whether the work was intended to be short-term or long-term at the outset
- 4.** the number of hours worked
- 5.** the level of earnings.

In some cases the DM will have to weigh, for example, low hours against long duration of work as part of their overall assessment of whether work is genuine and effective. However, case law does not identify one consistent approach to applying these and other factors: each case must be decided on its own merits.

C1500

## Part-time work

C1501 Work below the Minimum Earnings Threshold that is part time or low paid is not necessarily always marginal and ancillary. A part time worker may be considered a worker for EC purposes and retain a right to residence in the UK as long as the work is genuine and effective.

**Note:** It is not possible to provide a formula of hours, earnings and periods of work which determine whether or not a person is a worker.

### Example 1

Wolfgang is a German national who came to the UK on 18.6.15. On 20.6.15 he made an arrangement with a British family to act as an au pair. The agreement was that he would work 13 hours per week in return for which he would receive £35 and free board and lodging. At the outset the intention was that the arrangement would be long term, but the arrangement was terminated by the family on 28.7.15 and on 31.7.15 a claim was made for UC. The DM considered that the claimant had not yet been in the UK for long enough for his residence here to have become habitual. However she considered whether the claimant might be exempt from that requirement as a worker who had become involuntarily unemployed. The DM decided that Wolfgang had been a worker: his activities as an au pair had been genuine and effective; he had provided services of economic value to his employers in return for remuneration. Finally the arrangement had been intended at the outset to be long term and had terminated unexpectedly early.

### Example 2

The claimant is a Dutch national. He worked in the Netherlands from 1995. The firm he was working for in the Netherlands closed down in June 2012 and so he came to the UK to look for work. In October 2015 he claimed UC. It emerged that in the period since June 2012 the claimant had been looking for work and that between 2012 and 2014 he had been doing unpaid voluntary work. The DM decided that the claimant did not meet the basic condition to be in GB because he did not have a qualifying right to reside for the purposes of entitlement to UC. In particular the claimant wasn't a person who retained worker status because he had never been a "worker" in the UK. His activities had consisted of voluntary community work which was outside the "economic" form of activity for remuneration which is an essential factor in being a "worker".

### Example 3

The claimant is a Polish national. She sustained a back injury in a car accident in Poland in 2008, and despite medical treatment the result was that she is unable to stand for more than half an hour at a time. She came to the UK on 18.3.15 and started work as a full-time shop assistant on 20.3.15. The claimant worked for about 2 weeks, following which she went off work for a week due to severe back pain. She was paid SSP for this absence. The claimant then returned to work for a few days but she was unable to continue. The claimant did not return to work and her employment was terminated on 15.5.15. A claim for UC was made on 12.6.15. The DM examined whether the claimant had been a "worker". He assessed all

the circumstances of the case relating to the nature of both the activities concerned and the employment relationship at issue. The DM held that the claimant's physical capacity for work was an issue when considering the employment relationship which was critical to the determination of whether the claimant was a worker. The DM decided that the existing nature of the claimant's condition, the lack of physical capacity to do the work, the short interrupted duration of the employment and the reasons for the claimants dismissal were compelling grounds for finding that the claimant had not been a worker. The DM therefore decided that the claimant did not have a qualifying right to reside and was therefore not entitled to UC.

#### **Example 4**

An EEA national who claims UC shows that he has been working for three hours per day, five days a week for the last four months. The DM decides that the work is genuine and effective because it is not on such a small scale as to be marginal and ancillary. The work was on a regular basis continuing for a reasonable length of time.

C1502 - C1504

### **Self-employment**

C1505 See ADM C1314 for the characteristics of being a self-employed person rather than a 'worker'. The UT has held that, in order for a person to be regarded as self-employed for the purposes of the right to reside, the activity as a self-employed person must be genuine and effective rather than marginal or ancillary<sup>1</sup>.

**Note:** see ADM C1528 in relation to self-employment and the CJEU judgment of Saint Prix.

1 Bristol City Council v FV (HB) [2011] UKUT 494 (AAC), CH/2859/11

C1506 The Minimum Earnings Threshold described in ADM C1487 may not always be easy to apply in the case of self-employed persons, but in general if

- 1.** average profits (before tax and NI) are more than £681 pcm (£157 pw) in 2017/18 (see **Note 2** below) **and**
- 2.** average profits have been at or above that level for a continuous period of 3 months

the DM should accept that the self-employment is genuine and effective and they can be considered as self-employed persons under EU law.

**Note 1:** If average profits are less than £681 pcm (£157 pw) in 2017/18 (see **Note 2** below) and/or have not been at or above that level for a continuous period of 3 months, the DM will need to examine the case under the Tier 2 process (see ADM C1489) with a view to determining whether the self-employment is genuine and effective.

**Note 2:** The level of the Minimum Earnings Threshold is linked to the level of the HMRC Primary Earnings Threshold (PET), which is the point at which employees must pay Class 1 National Insurance Contributions. Self-employed have to pay Class 2 and Class 4 NICs around this point too. As the PET level is updated every April, DMs should ensure that they use the PET level relevant to the 3 month period of earnings under consideration. Where this period spans the April PET updating, DMs should use the pre-updating PET rate for the entire 3 month period.

**Note 3:** DMs should exercise care in applying the guidance on EU case law in ADM C1492 and C1493 (on the meaning of ‘worker’) to the question of whether self-employment is genuine and effective. Account must be taken of the different nature of self-employment: it may include periods of relative inactivity (see ADM C1452) and there will be periods particularly as a business is starting up when the person may be working long hours but not yet receiving much profit.

## **Examples of Self-Employment**

### **Example 1**

The claimant is a Czech national who came to the UK in 4.1.16. He claimed UC on 11.2.16. The claimant said that he had a right to reside as a self-employed person. He had a contract with a local business under which he provided bookkeeping services for a local business. The contract was for 2 hours work per month, at a fee of £25 an hour and the claimant had completed the work for January 2016 on 1.2.16. He had not advertised his services, nor had he sought any other contracts. On 14.2.16 a DM considered the claim and decided that the claimant’s self-employment activities were marginal rather than genuine and effective, so the claimant did not have a right to reside as a self-employed person. The DM decided that the claimant was not entitled to UC.

### **Example 2**

The claimant is a French national. She came to the UK on 6.10.15 and claimed UC on 17.12.15. It emerged that the claimant had been working on a self-employed basis as an interpreter. Since arriving, she had worked for 12 hours per week on average, charging a fee of £15 per hour. The DM decided that the claimant’s activity as a self-employed person was genuine and effective and that consequently the claimant had a right to reside as a self-employed person. As she had a right to reside as a self-employed person, she meets the basic condition of being a person to be treated as being in GB and was awarded UC accordingly.

C1507 – C1509

# CJEU Judgment Saint Prix v. SSWP C1510 - C1535

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## Introduction

C1510 In its judgment<sup>1</sup>, delivered on 19.6.14, the CJEU considered a case involving an EEA national who was exercising a right to reside as a worker in the UK and who ceased work due to pregnancy 11 weeks before her expected date of confinement.

1 Saint Prix v SSW P (Case C-507/12)

C1511 The impact of the judgment applies to new UC claims from pregnant women who give up work, and takes effect from the date that the judgment was delivered i.e. 19.6.14.

**Note:** More complex cases may need referral to DMA Leeds (see ADM C1526).

## Facts of the case

C1512 The claimant – Ms Saint Prix - is a French national who entered the UK in July 2006 and worked mainly as a teaching assistant from September 2006 to August 2007. She then commenced a university course from September 2007. During this period of study she became pregnant with an expected date of confinement of 2.6.08. In January 2008, hoping to find work in secondary schools, the claimant registered with an employment agency and in February 2008, withdrew from her university course. As no secondary school work was available, she took agency work in nursery schools. When nearly six months pregnant the claimant stopped that work on the grounds that the demands of caring for nursery school children had become too strenuous for her. She looked for a few days, without success, for work that was more suited to her pregnancy. In March 2008, being within 11 weeks of her expected date of confinement, she made a claim for IS, which was rejected on the grounds that she had lost her status as a worker and did not have a right to reside. In August 2008, three months after the premature birth of her child, the claimant resumed work.



## CJEU ruling

C1513 In their judgment, the CJEU ruled

Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of “worker”, within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

### Reasonable period

C1514 The CJEU ruled that a pregnant woman in Ms Saint Prix’s circumstances could only retain worker status if she returns to work or finds another job within a “reasonable period” after the birth of her child. The CJEU didn’t determine what constitutes a “reasonable period”, but stated that it was for the national court (in Ms Saint Prix’s case) to determine this. The CJEU gave guidance that the national court should take account of all the specific circumstances of the case and the applicable national rules on the duration of maternity leave, in accordance with Article 8 of the Council Directive 92/85/EEC (which relates to the health and safety of pregnant women at work and those who have recently given birth).

C1515 Under domestic legislation, pregnant women in employment are entitled to 26 weeks maternity leave. Where they are not entitled to SMP or MA, they may be able to claim IS<sup>1</sup> for a period which is aligned with the 26 week maternity leave period (up to 11 weeks before the expected week of confinement and 15 weeks after childbirth). There was Departmental agreement to use the 15 week period after childbirth as a yardstick for considering whether an EEA national in Ms Saint Prix’s circumstances returned to work within a “reasonable period”.

[1 IS \(Gen\) Regs, Sch 1B, para 14](#)

C1516 Pending the outcome of the CJEU’s Saint Prix judgment, several cases were stayed at the UT. Four lead cases were identified and their judgment<sup>1</sup> has been delivered by the UT. The UT adopted the approach that in the UK the “reasonable period”, for the purposes of a Saint Prix right, is to be determined by taking account of the national rules on the duration of maternity leave and additional maternity leave (in accordance with specified legislation<sup>2</sup>). That is the 52 week period made up of ordinary maternity leave and additional maternity leave. The UT also emphasised that there had to be fact specific consideration of any case in which those circumstances arose. However, the UT noted that it would be an unusual case in which the period was other than the 52 week period. The effects of this UT judgment take effect from the date that the judgment was delivered i.e. 10.9.15.

<sup>1</sup> SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP [2015] UKUT 0502 (AAC);

<sup>2</sup> [Directive 92/85/EEC Art 8](#)

## Returning to work or jobseeking

C1517 The UT in their judgment<sup>1</sup> agreed with DWP's approach that a Saint Prix worker can move from retained worker status under specified legislation<sup>2</sup> to a Saint Prix status and back to retained worker status provided she complies with the retained worker provisions of that specified legislation. However the UT goes on to extend that approach to someone who enters the Saint Prix reasonable period as a worker and whose job ends for lawful or unlawful reasons whilst being in the reasonable period. The UT held that a woman in that situation should be allowed to move to retained worker status provided the relevant conditions of the specified legislation are satisfied.

**Note:** More complex cases may need referral to DMA Leeds (see ADM C1526).

1 *SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP* [2015] UKUT 0502 (AAC);

2 [Directive 2004/38/EC](#) Art 7(3)(b) or (c)

### Example 1

Eva, an EEA national, ceased work on 31.12.15 when her fixed-term employment contact came to an end. She claimed and was awarded UC as a retained worker from 4.1.16. In February 2016, she finds out she is pregnant with an expected date of confinement of 30.6.16. On 15.4.16 she notifies the department that she is no longer looking for work, as she is within 11 weeks of her expected date of confinement. Although she states that she intends to look for a job after the birth of her baby.

The DM reviews Eva's claimant commitment (ADM chapter J1), determining that as Eva is within 11 weeks of her expected date of confinement, she is no longer subject to work related requirements (ADM chapter J2). Eva enters the Saint Prix period from 15.4.16, retaining worker status in line with the UT judgment<sup>1</sup> and is entitled to a fixed award of UC for the remainder of the 52 week reasonable period.

At the end of the reasonable period, having returned to the employment market, the DM determines that Eva no longer falls within the Saint Prix period and she resumes her retained worker status. The DM reviews her work conditionality requirements and calculates the balance of time that Eva has as a retained worker who is again looking for work and allows a fixed award of UC to the GPoW assessment date.

1 *SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP* [2015] UKUT 0502 (AAC);

### Example 2

Carla, an EEA national, began work as a cleaner on a six month temporary employment contract on 30.3.15. In April she finds out that she is pregnant with an expected confinement date of 19.11.15. Towards the end of August, she is finding it difficult to carry cleaning equipment and to carry out her usual cleaning duties. On 4.9.15 she gives up her job and claims UC on 14.9.15. She is not entitled to MA as she has not worked for the required period of time before her baby is due. Her employer told her that she can return to her job under a new contract when she is able to after the birth of her baby and she

stated at the point of her claim to UC that it was her intention to return to work.

As she gives up work within 11 weeks of her expected date of confinement, the DM considers that Carla is a worker, and retains her worker status in line with the Saint Prix judgment from the date that her contract of employment ceases. The DM awards UC from 14.9.15, until 41 weeks after the date that the claimant's pregnancy ends.

### **Nature of the Saint Prix right to reside – prospective or retrospective assessment**

C1518 The UT concluded that the Saint Prix right to reside should be assessed prospectively and the issue is to be approached as primarily a question of the woman's intention. The proviso in paragraph 41 of the CJEU Saint Prix judgment, that a woman must return to work or find another job within the reasonable period, should be treated as a condition subsequent for terminating the Saint Prix right where it is not met, and not a condition precedent to the right coming into existence.

C1519 DMs should

- 1.** continue to assess a Saint Prix right of residence prospectively at the point of the claim (ADM C1522) **and**
- 2.** assume that the claimant will return to work, where she says that she has an intention to do so (ADM C1523).

C1520 Where the claimant's circumstances change and she

- 1.** changes her mind during the reasonable period and does not return to work **or**
- 2.** does not comply with the conditions for retained worker status

her Saint Prix right of residence will be lost.

**Note:** Although the claimant will have been paid benefit up to the point that her Saint Prix right is lost, no recovery will be sought.

### **DM Action**

C1521 From 10.9.15, DMs may make an award of UC to an EEA national worker who

- 1.** gives up or stops seeking work due to the physical constraints of the late stages of pregnancy **and**
- 2.** at the outset of their UC claim, expresses an intention to return to their previous work, or find another job, by the end of the 41 week period following the birth of their child.

An award of UC may be made for up to 52 weeks, commencing 11 weeks before the expected date of confinement and ending 41 weeks after (but a shorter award period may be relevant if the claim is made closer to the expected date of confinement).

C1522 To enable DMs to determine whether a claimant falls within the scope of the Saint Prix judgment, relevant questions may include

1. was the claimant in genuine and effective work and did she give up work due to the late stages of pregnancy?
2. was the claimant complying with the conditions for retained worker status (see ADM C1391 1.) when she gave up looking for work due to the late stages of pregnancy?
3. does the claimant intend to go back to work?
4. does the claimant have a job to return to?
5. what is the timescale for their return to work?

C1523 Where a claimant indicates that they have an intention to return to their previous job or that they will find another job, the DM can award UC for a fixed period until the end of the 41 week period after the expected date of confinement. If the claimant subsequently does not return to work, a recovery of the UC paid will not be required.

C1524 Where the claimant indicates at the outset of the UC claim that they

1. have no intention of returning to any work within the 41 week period after childbirth **or**
2. plan to return to work much later

the conditions in the Saint Prix judgment will not be satisfied, the claimant will not retain worker status and does not obtain a Saint Prix right at any point.

C1525 Circumstances in which a claimant will fall **outside** the scope of the Saint Prix judgment include

1. if they give up, or stop seeking work as a retained worker for reasons **unrelated** to the physical constraints of the late stages of pregnancy **or**
2. if they were registered as a jobseeker for a significant period before the 11th week of their expected date of confinement **or**
3. if they were self-employed (see ADM C1528).

**Note 1:** This is not an exhaustive list of circumstances.

**Note 2:** This guidance will be updated to reflect Tribunal decisions which may provide further examples of claims which fall outside the scope of the Saint Prix judgment.

### **Example 1**

Magda, a Hungarian national, began work as a cleaner on a six month temporary employment contract on 24 February 2015. In March she found out that she was pregnant with an expected confinement date of 20 October 2015. Towards the end of July, she was finding it difficult to carry her cleaning equipment and to bend over when cleaning floors. On 5 August she gave up her job and claimed UC on 12 August (she was not entitled to MA as she had not worked for at least 26 weeks in 66 week period before her baby was due). Her employer told her she could return to her job under a new contract when she was able to after she gave birth, and it was her intention to return to work. As she was within 11 weeks of her expected date of confinement, the DM considered that Magda had retained worker status (in line with the judgement in Saint Prix). The DM therefore awarded UC from 12 August until 41 weeks after the (expected date of) birth of her child.

## **Example 2**

Dominique, a Belgian national, was an agency worker who had several spells of employment between 2011 and 2014. In June 2015, she claimed JSA as an EEA jobseeker and received this benefit from 26 June 2015. In 2015 while receiving JSA she became pregnant with an expected confinement date of 30 November.

At the beginning of September 2015 Dominique changed her address, moving into an area where UC had been rolled out. She claimed UC as she was within 11 weeks of her expected date of confinement. The DM considered that Dominique's situation was not covered by the Saint Prix judgment, as when she claimed UC (in the late stages of pregnancy) she was a jobseeker. Her claim for UC was therefore disallowed.

## **Complex cases**

C1526 If DMs are dealing with claims that cannot be resolved using this guidance, please contact DMA Leeds for further assistance.

## **Entitlement to SMP or MA**

C1527 Pregnant women may be entitled to claim SMP (from their employer) or MA (from the Department) if they had been working. Both are payable for a maximum period of 39 weeks. SMP or the standard rate of MA is generally paid at a higher rate than the standard rate of UC, and entitlement to SMP or MA is not subject to the right to reside test. DMs should therefore ensure that any pregnant EEA national claiming UC is made aware of a possible entitlement to SMP or MA, as this would likely be more advantageous to claim than UC.

## **Self-employment**

C1528 From 20.9.19 (the date of the UT decision), an EEA national woman who ceases self-employed activity<sup>1</sup> due to the physical constraints of the late stages of pregnancy and aftermath of childbirth retains the status of being self-employed<sup>2</sup> provided that she returns to

**1.** the same or another self-employed activity **or**

**2.** employment **or**

**3.** job seeking

within a reasonable period after the birth of her child.

1 [TFEU Art.49](#); 2 [Dakneviute \(C-544/18\)](#)

C1529 From 20.9.19 (the date of the UT decision), DMs may make an award to an EEA national woman who

**1.** gives up or stops seeking self-employment due to the physical constraints of the late stages of pregnancy **and**

**2.** at the outset of their claim, expresses an intention to return to their previous self-employment , or find another job, by the end of the 41 week period following the birth of their child.

An award of benefit may be made for up to 52 weeks, commencing 11 weeks before the expected date of confinement and ending 41 weeks after (but a shorter award may be relevant if the claim is made closer to the expected date of confinement).

C1530 - C1535

# Family Members of Workers and Self-employed persons C1596 - C1689

[Meaning of “Family Member” C1597 - C1598](#)

[Family Members and Extended Family Members of British Citizens C1599 - C1614](#)

[Certain Persons with a Permanent Right to Reside in the EEA C1615 - C1669](#)

[Refugees C1670 - C1671](#)

[Discretionary leave C1672 - C1673](#)

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[Humanitarian Protection C1678](#)

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[Section 67 Leave to remain C1680 - C1689](#)

C1596 Family members (see paragraph C1597) of EEA nationals who are workers or self-employed persons have the same rights of residence as those persons and are entitled to reside in the UK for as long as they remain family members<sup>1</sup>. This includes the family members of EEA nationals who retain worker status (see paragraph C1391 & C1393) or retain the status of self-employed person (see paragraph C1475).

1 [Imm \(EEA\) Regs 2016, reg 14\(1\) & \(2\)](#)

## Meaning of “Family Member”

C1597 [\[See Memo ADM 19/20\]](#) [\[See Memo ADM 29/20\]](#) [\[See Memo ADM 07/21\]](#)[\[See Memo ADM 08/21\]](#) The following are family members

1. a spouse (husband or wife) or civil partner<sup>1</sup>;
2. direct descendants of the EEA national, or of the EEA national’s spouse or civil partner, who are<sup>2</sup>
  - 2.1 under the age of 21 or
  - 2.2 dependants of the EEA national or the EEA national’s spouse or civil partner

**3.** dependent direct ascendant relatives of the EEA national, the EEA national's spouse or civil partner<sup>3</sup>.

**Note:** [[See Memo ADM 30/20](#)] [[See Memo ADM 19/21](#)] If certain conditions are met, family members of British citizens have the same EU law rights to reside as they would if they were a family member of another EEA state<sup>4</sup> (see ADM C1599 et seq for the full conditions). Thus where the conditions are satisfied and the British citizen would fall within the terms of ADM C1280 **1.** and if they were a national of another EEA state, their family members should be treated in the same way as a family member described in ADM 1280 **2.** .

1 [Imm \(EEA\) Regs 2016, reg 7\(1\)\(a\)](#); 2 [reg 7\(1\)\(b\)](#); 3 [reg 7\(1\)\(c\)](#); 4 [reg 9](#)

### **Meaning of “dependent”**

C1598 Direct descendants aged 21 or over (see C1597 **2.2**) and any relatives in the ascending family line (see C1597 **3.**) must prove they are dependent on the EEA national or his spouse or civil partner. A UT Judge has analysed the EU case law on the meaning of “dependent” in this context. He summarised that case law<sup>1</sup> as finding that<sup>2</sup>

- 1.** a person is only dependent who actually receives support from another
- 2.** there need be no right to that support and it is irrelevant that there are alternative sources of support available
- 3.** that support must be material<sup>3</sup>, although not necessarily financial, and must provide for, or contribute towards the basic necessities of life.

1 Case C-316/85, Centre Public D'Aide Sociale de Courcelles v Lebon; Case C-2000/02, Chen v Secretary of State for the Home Department; Case C-1/05, Jia v Migrationsverket; 2 CIS/2100/07;  
3 C-423/12 Reyes

## **Family Members and Extended Family members of British Citizens**

[[See Memo ADM 24/20](#)]

C1599 A person who is a family member (as defined in C1597) or extended family member of a British citizen (BC) has the same rights to reside in the UK as if they were the family member of a national of any other EEA state (except Croatia – on which see C1924 et seq), provided that the following conditions are satisfied<sup>1</sup>

### **1.** the BC

**1.1** was residing in an EEA state (other than the UK) as a worker, S/E person, self-sufficient person or student immediately before returning to the UK<sup>2</sup> **or**



**1.2** had acquired a right of permanent residence in an EEA state<sup>3</sup> **and**

**2.** the family member or extended family member and BC resided together in the EEA state<sup>4</sup> **and**

**3.** the family member or extended family member and BC's residence in the EEA state was genuine<sup>5</sup> **and**

**4.** either<sup>6</sup>

**4.1** the person was the family member or extended family member of BC during all or part of their joint residence in the EEA state **or**

**4.2** the person was an extended family member of BC during all or part of their joint residence in the EEA state, during which time the person was lawfully resident in the EEA state **or**

**4.3** the person was an extended family member during all or part of their joint residence in the EEA state, during which time the extended family member was lawfully resident in the EEA state **and**

**5.** genuine and family life was created or strengthened during their joint residence in the EEA state<sup>7</sup> **and**

**6.** the conditions in **1.**, **2.**, and **3.** have been met concurrently<sup>8</sup>.

**Note:** For the purposes of **1.2**, the BC is only to be treated as having acquired the right of permanent residence in the EEA state<sup>9</sup>, if such residence would have led to the acquisition of the right of permanent residence<sup>10</sup>, had it taken place in the UK.

1 [Imm \(EEA\) Regs 2016, reg 9\(2\)](#); O&B (C-456/12); 2 [Imm \(EEA\) Regs 2016, reg 9\(2\)\(a\)\(i\)](#);

3 [reg 9\(2\)\(a\)\(ii\)](#); 4 [reg 9\(2\)\(b\)](#); 5 [reg 9\(2\)\(c\)](#); 6 [reg 9\(2\)\(d\)](#); 7 [reg 9\(2\)\(e\)](#); 8 [reg 9\(2\)\(f\)](#); 9 [reg 9\(6\)](#); 10 [reg 15](#)

C1600 [[See Memo ADM 29/20](#)][[See Memo ADM 30/20](#)][[See Memo ADM 07/21](#)][[See Memo ADM 08/21](#)][[See Memo ADM 19/21](#)] Factors that are relevant to whether residence in an EEA state (other than the UK) is or was genuine include<sup>1</sup>

**1.** whether the centre of the BC's life transferred to the EEA state **and**

**2.** length of the family member or extended family member and BC's joint residence in the EEA state **and**

**3.** the nature and quality of the family member or extended family member and BC's accommodation in the EEA state and whether it is or was the BC's principal residence **and**

**4.** the degree of the family member or extended family member and BC's integration in the EEA state **and**

**5.** whether the family member's or extended family member's first lawful residence in the EU with the BC was in an EEA state.

C1601 There is no application<sup>1</sup> of the regulation in the circumstances where the purpose of the residence of the BC in the other EEA state was as a means to circumvent any immigration laws<sup>2</sup> applicable to any non-EEA family members to have leave to enter or remain in the UK.

1 [Imm \(EEA\) Regs 2016, reg 9\(4\)](#); 2 [Immigration Act 1971](#)

C1602 [[See Memo ADM 30/20](#)] [[See Memo ADM 07/21](#)][[See Memo ADM 19/21](#)] Where it is necessary to treat a BC as though the BC were an EEA national<sup>1</sup>, for the purposes of determining whether the BC would be a qualified person<sup>2</sup> (see C1710)

**1.** any requirement to have comprehensive sickness insurance (see C1728 – C1730 and C1734) cover in the UK still applies, except that cover is not required to extend to the BC **or**

**2.** in assessing whether the BC can continue to be treated as a retained worker<sup>3</sup>, the BC is not required to satisfy condition A<sup>4</sup> (see C1405) **or**

**3.** in assessing whether the BC can be treated as a jobseeker<sup>2</sup>, the BC is not required to satisfy condition A<sup>4</sup> and where relevant, condition C<sup>5</sup>.

1 [Imm \(EEA\) Regs 2016, reg 9\(7\)](#); 2 [reg 6\(1\)](#); 3 [reg 6\(2\)\(b\) or \(c\)](#); 4 [reg 6\(5\)](#); 5 [reg 6\(9\)](#)

### **Transitory provisions**

C1603 For the purposes of C1599 to C1602, any application made under the Imm (EEA) Regs 2006 between 25.11.16 and 1.2.17 for

**1.** an EEA family permit **or**

**2.** a registration certificate **or**

**3.** a residence card **or**

**4.** a document certifying permanent residence **or**

**5.** a permanent residence card **or**

**6.** a derivative residence card

made but not determined before 25.11.16, is to be treated as having been made under the Imm (EEA) Regs 2006<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 44 & Sch 5, para 2](#)

## Certain Persons with a Permanent Right to Reside in the EEA

### Worker or Self-employed person who has ceased activity

C1615 EEA nationals who are workers or self-employed persons who have ceased activity in the circumstances described in paragraphs C1616 to C1620 below and their family members (as defined in paragraph C1597) acquire a permanent right to reside in the host Member State<sup>1</sup>. Such a person is not required to be habitually resident in CTA<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(c\), \(d\) & \(e\)](#); 2 [UC Regs, reg 9\(4\)\(c\)](#)

### Retirement

C1616 A person is a worker or self-employed person who has ceased activity if that person<sup>1</sup>-

**1. stops working and**

**2. either**

**2.1** has reached the age at which he is entitled to a state pension on the day they stop work **or**

**2.2** in the case of a worker, has taken early retirement **and**

**3.** was working in the UK for at least 12 months before stopping (but see note) **and**

**4.** resided in the UK continuously for more than three years before stopping work (but see note)

**Note:** Where the spouse or civil partner of the worker or S/E person is a British citizen, the conditions in subparagraphs **3** and **4** above on length of residence or time working will not apply<sup>2</sup>

1 [Imm \(EEA\) Regs 2016, reg 5\(2\)](#); 2 [reg 5\(6\)](#)

### Permanent Incapacity

C1617 A person is a worker or self-employed person who has ceased activity if that person<sup>1</sup>

**1.** stops working as a result of a permanent incapacity for work **and**

**2. either**

**2.1** except where the person is the spouse or civil partner of a British citizen<sup>2</sup>, resided in the UK continuously for 2 years prior to stopping work **or**

**2.2** the permanent incapacity is the result of an accident at work or an occupational disease that entitles them to a pension payable (in full or in part) by a UK institution.

1 [Imm \(EEA\) Regs 2016, reg 5\(3\)](#); 2 [reg 5\(6\)](#)

### **Working Abroad but Place of residence retained in the UK**

C1618 A person is a worker or self-employed person who has ceased activity where they<sup>1</sup>

- 1.** are working in employment or as a self-employed person in an EEA state other than the UK but retain a place of residence in the UK to which they return at least once a week **and**
- 2.** before that work started, had been continuously resident and continuously active as a worker or self-employed person in the UK for at least 3 years.

1 [Imm \(EEA\) Regs 2016, reg 5\(4\)](#)

### **Periods treated as periods of working**

C1619 In calculating periods when the person was working for the purposes of paragraphs C1616 to C1618, the following periods are included as periods of work<sup>1</sup>

- 1.** periods of inactivity not of the person's own making **and**
- 2.** periods of inactivity due to illness or accident **and**
- 3.** in the case of
  - 3.1.** a worker, periods of involuntary unemployment duly recorded by the relevant employment office except where subparagraph **3.2** applies,
  - 3.2.** A8 nationals who were required to register as a worker as at 30.4.09. periods of involuntary unemployment duly recorded by the relevant employment office but only where<sup>2</sup>
    - 3.2.a.** they ceased working during the first month of registered employment, for the remainder of that month **and**
    - 3.2.b** the accession worker became unemployed or ceased work on or after 1.5.09.

1 [Imm \(EEA\) Regs 2016, reg 5\(7\)](#); 2 [Imm \(EEA\) Regs 2006, reg 7A\(3\)](#)

### **Family Member of Worker who has died**

C1620 A person who was a family member (within the meaning given in paragraph C1597) of a worker or self-employed person acquires a permanent right to reside where<sup>1</sup>

**1.** the worker or self-employed person has died **and**

**2.** the family member resided with the worker or self-employed person immediately before their death **and**

**3. either** the worker or self-employed person

**3.1** had resided continuously in the UK for at least 2 years immediately before they died **or**

**3.2** the death was as a result of an accident at work or an occupational disease

Such a person is not required to be habitually resident in the CTA for UC purposes<sup>2</sup>.

[1 Imm \(EEA\) Regs 2016, reg 15\(1\)\(e\)](#); [2 UC Regs, reg 9\(4\)\(c\)](#)

C1621 - C1669

## Refugees

C1670 Refugees<sup>1</sup> are people who are outside their country of origin and are unwilling to return there for fear of persecution because of their

- race
- religion
- nationality
- political opinion
- membership of a social group.

[1 Convention relating to the Status of Refugees, Art. 1 \(as extended\)](#)

C1671 People recognized as refugees by the Immigration and Nationality Directorate are granted asylum. From 30 August 2005 they will have been granted limited leave to enter or remain for five years, rather than indefinite leave. Spouses, recognized civil partners, and dependent children under the age of 18 are normally allowed to join a refugee in the UK immediately, and are also granted asylum. Refugees, their spouses or recognized civil partners and dependants who are granted asylum are not subject to the habitual residence test<sup>1</sup>.

[1 UC Regs, reg 9\(4\)\(d\)](#)

## Discretionary leave

C1672 The HO may alternatively grant discretionary leave outside the immigration rules.

C1673 Humanitarian protection and discretionary leave replaced exceptional leave to enter or remain from 1 April 2003 but there will still be residual cases of exceptional leave to 2007. Whereas indefinite leave to remain gave a right to permanent residence, limited leave, humanitarian protection, discretionary leave and exceptional leave do not guarantee that right.

The HO may refer to

- 1.** limited leave given to refugees **or**
- 2.** exceptional leave to remain **or**
- 3.** leave to remain on an exceptional basis **or**
- 4.** humanitarian protection **or**
- 5.** discretionary leave.

A claimant given one of the above is not subject to the habitual residence test<sup>1</sup> for as long as the leave lasts, including periods when he/she has applied in time for an extension of leave.

[1 UC Regs, reg 9\(4\)\(e\) & \(f\)](#)

## Destitution/Domestic Violence concession

C1674 Since 1.4.12, individuals who came to the UK or were granted leave to stay in the UK as the spouse or partner of

- 1.** a British citizen **or**
- 2.** someone settled in the UK

and whose relationship has broken down due to domestic violence have been able to apply to the Home Office for limited leave to remain (granted outside the Immigration Rules) pending consideration of an application for indefinite leave to remain.

C1675 The Home Office consider whether:

- 1.** the applicant entered the UK or was given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present and settled in the UK **and**
- 2.** the relationship has broken down due to domestic violence **and**

**3.** they do not have the means to access accommodation or to support themselves and need financial help **and**

**4.** they will apply to stay permanently in the UK under the Destitution Domestic Violence immigration rule<sup>1</sup>.

If the Home Office accepts that someone satisfies **all 4** of the conditions above it will issue the applicant with letters notifying the start and end date for 3 months limited leave to remain in the UK. During this 3 month period the claimant must apply to stay permanently under the Domestic Violence immigration rule<sup>1</sup>.

1 [Immigration Rules](#), rule 289B

C1676 If the person has made an application to stay permanently within the 3 month period but the Home Office has not yet made a decision by the end of the 3 month period, the period of limited leave under the Destitution Domestic Violence concession continues until the final decision is made. In these circumstances (i.e. where an application has been made within the 3 month period but the Home Office has not made a decision within that 3 month period) where the final decision is a refusal to grant indefinite leave to remain, the limited leave continues for a further 10 days after the Home Office decision is sent to the applicant.

C1677 During any period when a person has limited leave under the Destitution Domestic Violence concession (including the periods of extension described in paragraph 8 above), that person does not have to satisfy the requirement that they be habitually resident in the CTA<sup>1</sup> and therefore (provided they satisfy the other conditions of entitlement) will be eligible for UC.

1 [UC Regs, reg 9\(1\) & \(4\)\(e\)\(ii\)](#)

## **Humanitarian Protection**

C1678 The HO may grant humanitarian protection within the immigration rules to persons who have not been recognised as refugees but who are considered likely to face serious harm in their country of origin. As with refugees the family members of a person granted humanitarian protection are allowed to join that person and are granted the same leave. Under EU law common criteria for the identification of persons genuinely in need of international protection are applied across EU Member States<sup>1</sup>. A new category of protection is introduced, known as subsidiary protection, which is aligned with the present category of humanitarian protection. Persons granted humanitarian protection within the immigration rules do not have to satisfy the habitual residence test<sup>2</sup>.

1 [Directive 2004/83/EC](#); 2 [UC Regs, reg 9\(4\)\(f\)](#)

## Continuation of leave

C1679 Where a person has a limited period of leave to remain in the UK and they make a timeous application (i.e. before their existing leave to remain expires) to the HO to have their leave extended, the person's existing leave continues until the HO has made a decision on the application (or until the application is withdrawn)<sup>1</sup>. If the application to extend the leave period is made after the applicant's current leave has expired, the applicant's leave period is not extended and the person is treated as an 'overstayer'.

[1 Immigration Act 1971, s 3C](#)

## Section 67 Leave To Remain

C1680 The UK Government is required<sup>1</sup> to make arrangements as soon as possible to relocate and support a specified number of unaccompanied child asylum seekers who have been accepted for transfer from another European state to the UK (commonly known as the "Dubs Amendment"). The number of children must be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

[1 Immigration Act 2016, s.67](#)

## Relocation and support of unaccompanied child asylum seekers from Europe

C1681 From 5.7.18 new Immigration Rules<sup>1</sup> are introduced by the Home Office, setting out the basis on which the transfer<sup>2</sup> of unaccompanied child asylum seekers will be made from another European state to the UK.

[1 Immigration Rules, paras 352ZG – 352ZS](#); [2 Immigration Act 2016, s.67](#)

C1682 Upon arrival to the UK, the child will be granted immigration bail as an asylum seeker (see C1063). Following the processing of their asylum seeking application, the Home Office may grant the child

- 1.** refugee status (see C1670 - C1671) **or**
- 2.** humanitarian protection (see C1678) **or**
- 3.** section 67 leave to remain<sup>1</sup>.

[1 Immigration Act 2016, s.67](#)

C1683 Section 67<sup>1</sup> is a new type of leave to remain. Those who hold this status are not refugees, persons granted humanitarian protection, nor asylum seekers. They will not be persons subject to immigration control and will have access to public funds. Consequently they will have access to claim UC (provided all other entitlement conditions are met). For the purposes of UC, section 67 cases do not fall within the



specified category<sup>2</sup> of persons to be exempt from the habitual residence test.

**Note:** The Home Office have confirmed that the Biometric Residence Permit will have “SECTION 67 LEAVE” printed on it to identify this cohort.

*1 Immigration Act 2016, s.67; 2 IS (Gen) Regs, reg 21AA(4); ESA Regs, reg 70(4); JSA Regs, reg 85A(4); SPC Regs, reg 2(4)*

## **Evidence**

C1684 Evidence of nationality must be in the form of a valid passport or Biometric Residence Permit (see C1067). The evidence within these documents should contain information detailing

- 1.** the type of leave to enter or remain that has been granted (where limited leave to enter or remain has been granted, an expiry date should also be shown) **and**
- 2.** whether the person has been granted recourse to public funds.

**Note:** Where the claimant declares that they have leave to enter or remain in the UK with recourse to public funds, but are awaiting documentation from the Home Office to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

C1685 – C1689

# Right to Reside - Habitual Residence Test Applies C1690 - C1850

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[Extended right of residence](#) C1692 - C1709

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## Introduction

C1690 C1280 to C1678 set out the groups of people with certain specific rights to reside who are exempt from the requirement that they be habitually resident in the CTA. As stated in C1225, a person cannot be treated as habitually resident in the CTA unless that person has a right to reside in the CTA<sup>1</sup>. The following paragraphs set out the groups of people who have a right to reside in the CTA. These people will nonetheless have to be actually habitually resident in the CTA<sup>2</sup> (see C1946 et seq). The list is not exhaustive and DMs may need to contact the Home Office to establish whether a person has a right to reside.

**Note:** whether a person has a right to reside in the UK is determined by domestic nationality and immigration law for non-EEA nationals and by EU law and domestic immigration law for EEA nationals and their family members arriving in the UK and claiming free movement rights.

C1691 The following persons have the right to reside in the UK and therefore in the CTA but **will** have to satisfy the requirement that they be actually habitually resident in the CTA

1. UK nationals (including persons from other countries who are granted British citizenship).
2. certain qualified persons (see C1710)
3. family members of certain qualified persons and certain family members of EEA nationals with a permanent right of residence
4. extended family members of “qualified persons” or EEA nationals with a permanent right of residence (C1737)
6. persons who have acquired the right of permanent residence (except the groups referred to in C1615 to C1620)
7. family members who have retained a right to reside (C1778)
8. the primary carer of the child of a migrant worker who is in education in the UK (C1827 et seq)

## **Extended right of residence**

C1692 Qualified persons have the right to reside in the UK for as long as they remain qualified persons. Family members of qualified persons and of EEA nationals with a permanent right of residence are entitled to reside in the UK as long as they remain family members of those persons (see ADM C1736 for the meaning of “family member”).

C1693 – C1709

## **Certain Qualified persons**

C1710 The following persons<sup>1</sup> (who are EEA nationals in the UK) and their family members have an EU right to reside as “qualifying persons” but must satisfy the habitual residence test.

1. jobseekers (from 10.6.15 see C1854 to C1860)
2. self-sufficient persons (see C1728)
3. students (see C1732)

<sup>1</sup> [Imm \(EEA\) Regs 2016, reg 6\(1\)](#)

## **Jobseekers**

C1711 Jobseekers and their family members have a right to reside for an initial period of six months, and for longer if they are seeking employment, and have a genuine chance of being engaged<sup>1</sup>. However, from

10.6.15, see C1854 to C1860.

1 Directive 2004/38/EC, Art 14(4)(b); Case C-292/89, Antonissen; [Imm \(EEA\) Regs 2016, reg 6\(1\)](#), & [reg 14](#);

C1712 - C1727

### **Self-sufficient persons with comprehensive sickness insurance**

C1728 EEA nationals who

**1.** have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the UK **and**

**2.** have comprehensive sickness insurance cover in the UK

and their family members have a right to reside<sup>1</sup> but must satisfy the habitual residence test.

1 Directive 2004/38/EC, Art 7(1)(b); [Imm \(EEA\) Regs 2016, reg 4\(1\)\(c\)](#)

C1729 An EEA national's resources (and where applicable the resources of their family members) are to be regarded as "sufficient" if<sup>1</sup>

**1.** they are greater than the level of resources at or below which a British Citizens (and where appropriate their family members) would be entitled to social assistance in the UK **or**

**2.** C1729.1 does not apply (i.e. resources are not above social assistance levels) but, taking into account the personal situation of the person concerned (and where applicable their family members), it appears to the DM that the resources of the person(s) concerned should be regarded as sufficient.

**Note:** In the UK, social assistance includes SPC and UC

1 [Imm \(EEA\) Regs 2016, reg 4\(4\)](#)

C1730 A claimant will have comprehensive sickness insurance where the UK is entitled to reimbursement of NHS healthcare costs from another Member State<sup>1</sup>. This will usually be the case where the claimant is receiving a pension or invalidity benefit from another Member State, but it can arise in other circumstances. The European Health Insurance Card (EHIC) only offers comprehensive sickness insurance where the EU citizen concerned has not moved residence to the UK and intends to return to his home state, such as a student on a course in the UK<sup>2</sup>.

1 SG v Tameside MBC (HB) [2010] UKUT 243 (AAC);

2 European Commission COM 2009) 313 & SG v Tameside MBC (HB) [2010] UKUT 243 (AAC)

C1731

## Students

C1732 A student<sup>1</sup> means a person who

**1.** is enrolled for the principal purpose of following a course of study (including vocational training) at a public or private establishment which is

**1.1** financed from public funds **or**

**1.2** otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the UK in which the establishment is located” **and**

**2.** assures the Secretary of State that he has, and his family members have, sufficient resources (see C1729) to avoid him and his family members becoming a burden on the social assistance system of the UK **and**

**3.** is covered, and his family members are covered, by sickness insurance in respect of all risks in the UK (see C1730 above) .

**Note:** Students and their family members (see C1733) have a right to reside but will not normally be entitled to UC because that right depends upon them not becoming a burden on the UK’s social assistance system (of which UC is a part).

1 Directive 2004/38/EC, Art 7(1)(c) and (d); [Imm \(EEA\) Regs 2016, reg 4\(1\)\(d\)](#)

## Family members of students

C1733 In the case of an EEA student, other than a student who is a “qualified person” under other provisions, after the period of three months beginning on the date on which the student is admitted to the UK only the following shall be treated as his family members<sup>1</sup>

**1.** his spouse or civil partner

**2.** the dependent children of the student, his spouse or civil partner.

1 [Imm \(EEA\) Regs 2016, reg 7\(2\)](#)

## Comprehensive Sickness Insurance for family members of students

C1734 From 6.4.15, specified legislation<sup>1</sup> was amended which brings in the requirement for EEA nationals who are exercising Treaty rights in the UK as a student, to hold comprehensive sickness insurance cover not only for themselves, but also for their family members. Prior to 6.4.15, EEA nationals who were residing in the UK as students were required to hold comprehensive sickness insurance for themselves, but the regulations did not explicitly require such persons to also hold comprehensive sickness insurance for any family members who were residing in the UK with them. That was in contrast

to the requirements for self-sufficient persons, who are explicitly required to hold comprehensive sickness insurance for themselves and their family members. The changes from 6.4.15 bring the requirements for family members of students in line with those for the family members of self-sufficient persons.

1 [Imm \(EEA\) Regs 2016, reg 4\(2\) & 4\(4\)](#)

## Family Members

C1735 The family members of the qualified persons listed at C1710 residing in the UK have the same rights to reside as that qualifying person as long as<sup>1</sup>

1. they remain a member of the family of that person **and**
2. that person continues to be a qualifying person or to have a permanent right to reside.

**Note:** Like the qualified persons listed at C1710 from whom they derive their right to reside these family members have to be actually habitually resident.

1 [Imm \(EEA\) Regs 2016, reg 14\(2\)](#)

## Meaning of “family member”

C1736 [[See Memo ADM 34/20](#)] For the purposes of C1735, a “family member” means<sup>1</sup>

1. spouse (husband or wife) or civil partner
2. direct descendants of the EEA national, his spouse or civil partner who are
  - 2.1 under the age of 21 **or**
  - 2.2 dependants of his, his spouse or civil partner
3. direct ascendant relatives of the EEA national, his spouse or civil partner, who are dependants.
4. extended family members (C1737)

**Note 1:** See C1598 for advice on dependency

**Note 2:** see the Note to C1823 for guidance in respect of a child under the age of 21, who is estranged from their parents.

1 [Imm \(EEA\) Regs 2016, reg 7\(1\)](#)

## “Extended family members”

[[See Memo ADM 30/20](#)] [[See Memo ADM 19/21](#)]

C1737 [[See Memo ADM 34/20](#)] [[See Memo ADM 07/21](#)] An “extended family member” is<sup>1</sup> a person (who is not a family member of an EEA national within the meaning given in C1597) who is a relative (or in one case, a partner or partner's child (under the age of 18)) of an EEA national, who is treated as a family member for the purposes of the right to reside aspect of the habitual residence test only. They may or may not be EEA nationals<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 8](#); Banger (C-89/17); SM (Algeria)(C-129/18); [2018] UKSC 9; 2 Directive 2004/38/EC, Art 3(2)

C1738 An extended family member should have an EEA family permit, a registration certificate or a residence card. They will continue to be treated as a family member as long as those documents remain in force<sup>2</sup> and they continue to satisfy the condition<sup>3</sup> that

### 1. the person<sup>4</sup>

**1.1** is under the age of 18 **and**

**1.2** is subject to a non-adoptive legal guardianship order in favour of an EEA national that is recognised under the national law of the State in which it was contracted **and**

**1.3** has lived with the EEA national since their placement under the guardianship order **and**

**1.4** has created family life with the EEA national **and**

**1.5** has a personal relationship with the EEA national that involves dependency on the EEA national and the assumption of parental responsibility, including legal and financial responsibilities, for that person by the EEA national **or**

### 2. the person is a relative of an EEA national<sup>5</sup> and

**2.1** is residing in any state other than the UK and is dependent on the EEA national or is a member of the EEA national's household<sup>6</sup> **and**

**2.1.a** is accompanying the EEA national to the UK or wishes to join the EEA national in the UK<sup>7</sup> **or**

**2.1.b** has joined the EEA national in the UK and continues to be dependent (see C1598) on the EEA national or to be a member of his household<sup>8</sup> **or**

**2.2** on serious health grounds strictly requires the personal care of the EEA national, his spouse or

civil partner<sup>9</sup> **or**

**2.3** would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the UK as a dependent relative of the EEA national were the EEA national a person settled and present in the UK<sup>10</sup> **or**

**3.** the person is the partner of an EEA national (other than a civil partner) and can prove that they are in a durable relationship with the EEA national or the child (under the age of 18) of that partner<sup>11</sup>.

Extended family members of EEA nationals who are students are issued with family permits, registration certificates or residence cards under specific provisions.

*1 [Imm \(EEA\) Regs 2016, reg 8](#); 2 [reg 7\(3\)\(b\)](#); 3 [reg 7\(3\)\(a\)](#); 4 [reg 8\(1A\)](#); 5 [reg 8\(7\)](#); 6 [reg 8\(2\)\(b\)](#); 7 [reg 8\(2\)\(b\)\(i\)](#); 8 [reg 8\(2\)\(b\)\(ii\)](#); 9 [reg 8\(3\)](#); 10 [reg 8\(4\)](#); 11 [reg 8\(5\)](#)*

C1739 "Relative of an EEA national" includes<sup>1</sup> a relative of the spouse or civil partner of an EEA national who

**1.** has prior to 1.2.17 been issued with

**1.1** an EEA family permit **or**

**1.2** a registration certificate **or**

**1.3** a residence card **and**

**2.** has since the most recent issue of the document within **1.** been continuously resident in the UK.

*1 [Imm \(EEA\) Regs 2016, reg 8\(7\)](#)*

C1740-C1749

## **Permanent Right to Reside - 5 Years' Residence**

C1750 The EU Citizenship Directive<sup>1</sup> introduced for the first time a permanent right to reside for EU citizens and members of their family who have resided legally in a host Member State of the EU for a continuous period of five years. The Directive was brought into force in the UK by regs<sup>2</sup> which took effect from 30.4.06.

*1 Directive 2004/38/EC; 2 [Imm \(EEA\) Regs 2016](#)*

C1751 Under the Imm (EEA) regs 2016 the following persons acquire the right to reside in the UK permanently



**1.** an EEA national who has resided in the UK in accordance with the Imm (EEA) Regs 2016 for a **continuous** period of five years<sup>1</sup>

**2.** family members of EEA nationals (who are not themselves EEA nationals) who have resided in the UK in accordance with the Imm (EEA) Regs 2016 for a **continuous** period of five years<sup>2</sup>.

**Note:** subject to C1773, a break in continuity during which residence is not in accordance with the Imm (EEA) Regs 2016 will mean that the five year qualifying period has to be served afresh. Periods when the person resided legally before the break will not count. Put another way, the clock is reset to zero.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(a\)](#); 2 [reg 15\(1\)\(b\)](#)

C1752 The five year qualifying period therefore includes periods during which the EEA national

**1.** was a worker or self employed person in the UK; **or**

**2.** retained worker status in the UK whilst temporarily incapable of work because of illness or accident or whilst involuntarily unemployed and seeking work **or**

**3.** was both self-sufficient and had comprehensive sickness insurance for themselves and their family members **or**

**4.** was a student who is both self sufficient and has comprehensive sickness insurance for themselves and their family members **or**

**5.** was a family member accompanying or joining a person who satisfied the above conditions.

**Note:** this list is not exhaustive

C1753 – C1771

### **Temporary absences that do not break continuity**

C1772 Certain temporary absences from the host Member State will not break the continuity of residence<sup>1</sup>

**1.** absences not exceeding six months in a year

**2.** absences of more than six months for compulsory military service

**3.** one absence of a maximum of 12 consecutive months for important reasons such as

**3.1** pregnancy

**3.2** childbirth

**3.3** serious illness

**3.4** study or vocational training

**3.5** a posting abroad

**Note:** Although these absences do not break the continuity of residence requirement, they do not count towards the accrual of the 5 years continuous residence<sup>2</sup>.

1 Directive 2004/38/EC, Art 16(3); 2 CIS/2258/08

C1773 [[See Memo ADM 29/20](#)] [[See Memo ADM 08/21](#)] From 1.2.17, additional criteria are added to the circumstances where continuity of residence is broken<sup>1</sup>. This is when the EEA national

- 1.** serves a sentence of imprisonment<sup>2</sup> **or**
- 2.** has a deportation or exclusion order made in relation to that person **or**
- 3.** is removed from the UK under the Imm (EEA) Regs 2016.

1 [Imm \(EEA\) Regs 2016, reg 3\(3\)](#); 2 Onuekwere (C-378/12); MG (C-400/12)

### **Qualifying period - effect of periods of residence before 30.4.06 - EEA nationals**

C1774 Subject to paragraph C1776 below, any period during which an EEA national carried out activities or was resident in the UK in accordance with specific regulations<sup>1</sup> (i.e. the UK regulations and Directives concerning the right to reside in EU law that were in force before 30.4.06) is to be treated as a period in which that activity or residence was in accordance with the Imm (EEA) Regs 2016<sup>2</sup>. Accordingly this will count towards the qualifying period for the acquisition of a permanent right to reside. **But note that the permanent right to reside can only take effect from 30.4.06.**

1 Imm (EEA) Regs 00; Imm (EEA) Order 94; Dir 64/221/EEC; Dir 68/360/EEC; Dir 72/194/EEC; Dir 73/148/EEC; Dir 75/34/EEC; Dir 75/35/EEC; Dir 90/364/EEC; Dir 90/365/EEC; Dir 93/96/EEC;

2 [Imm \(EEA\) Regs 2016, Sch 6, para 8\(2\)](#);

### **Qualifying period - periods before accession**

C1775 Subject to paragraph C1776 below, any period during which a national of a non-EEA state which subsequently became an EEA state carried out an activity or was resident in the UK throughout which they

- 1.** had leave to enter or remain in the UK **and**
- 2.** would have been carrying out that activity or residing in the UK in accordance with the Imm (EEA) Regs 2016

**2.1** had the Imm (EEA) Regs 2016 been in force **and**

**2.2** the person's state of nationality had been an EEA state at the time

is to be treated<sup>1</sup> as a period of activity or residence in the UK completed in accordance with the Imm (EEA) Regs 2016. Such periods will therefore count towards the acquisition of a permanent right to reside.

[1 Imm \(EEA\) Regs 2016, Sch 6, para 8\(3\)](#)

### **Periods where residence was not in accordance with the regs**

C1776 A period during which the conditions in paragraphs C1774 or C1775 above were satisfied will not be regarded<sup>1</sup> as a period of activity or residence completed in accordance with the Imm (EEA) Regs 2016 where it was followed by a period of more than two consecutive years throughout which

- 1.** the person was absent from the UK **or**
- 2.** the person's residence in the UK was not in accordance with paragraphs C1774 or C1775 **or**
- 3.** was not otherwise in accordance with the Imm (EEA) Regs 2016.

[1 Imm \(EEA\) Regs 2016, Sch 6, para 8\(4\)](#)

### **Effect of absence after right to permanent residence acquired**

C1777 [[See Memo ADM 07/21](#)] Once acquired on or after 30.4.06, the right of permanent residence is only lost by absence from the host Member State for a period exceeding two consecutive years<sup>1</sup>.

1 Directive 2004/38/EC, art 16(4)

### **Family Members who have retained the right to reside**

C1778 [[See Memo ADM 29/20](#)] [[See Memo ADM 08/21](#)] Under certain circumstances a family member of an EEA national may retain the right to reside on the death or departure from the UK of the EEA national<sup>1</sup>. To retain the right of residence the person must<sup>2</sup>

- 1.** have been the family member of a qualified person (or an EEA national with a permanent right to reside) when that person or EEA national died **and**
- 2.** have resided in the UK in accordance with the Imm (EEA) Regs 2016 for at least the year before the death of the qualified person (or the EEA national with a permanent right to reside) **and**
- 3.** satisfy the condition that either

**3.1** although not an EEA national, they would, if they were one, be a worker, self-employed person

or self-sufficient person for the “qualified person” provisions **or**

**3.2** they are a family member of a person who falls within **3.1**

In other situations where the claim is based on a family member’s retained right of residence cases should be submitted to DMA Leeds for guidance. This applies in particular to cases where it relates to termination of the marriage or civil partnership of the family member to the qualified person<sup>3</sup>.

**Note: 1** a “qualified person” in C1778.1 & 2 means a jobseeker, a worker, a self-employed person, a self sufficient person or a student

**Note: 2** family members can also acquire a permanent right to reside in some circumstances where the EEA national has ceased activity or died (see C1615 and C1620). Family members who have acquired a permanent right to reside by this route are not subject to the rules described above<sup>4</sup>.

1 Directive 2004/38/EC, Art 12; [Imm \(EEA\) Regs 2016, reg 10](#); 2 [reg 10\(2\)](#);

3 Directive 2004/38/EC, Art 13; [Imm \(EEA\) Regs 2016, reg 10\(5\)](#); 4 [reg 10\(8\) & \(9\)](#)

C1779 – C1792

## **EEA Right to reside - permanent residence**

### **Introduction**

C1793 Guidance at ADM C1794 to C1824 is to enhance existing ADM guidance regarding permanent residence for EEA nationals and their families.

C1794 Since 30.4.06, EEA nationals and their family members, who have resided legally in the UK for a continuous period of 5 years in accordance with laws relating to EU free movement rights that were in force during the 5 year period, will acquire a right of permanent residence<sup>1</sup> (see ADM C1750 – C1752). This means they must have resided in the UK as

**1.** a worker **or**

**2.** a S/E person **or**

**3.** someone who retained the status of worker or S/E person **or**

**4.** a student (and had comprehensive sickness insurance – see ADM C1734) **or**

**5.** a self-sufficient person (and had comprehensive sickness insurance - see ADM C1730).

1 Directive 2004/38/EC, Art. 16; [Imm \(EEA\) Regs 2016, reg 15](#)

C1795 An EEA national who has acquired the right of permanent residence on or after 30.4.06 will only

lose that right if they are absent from the UK for more than 2 consecutive years<sup>1</sup> (see ADM C1777).

1 Directive 2004/38/EC, Art. 16(4); [Imm \(EEA\) Regs 2016, reg 15\(3\)](#)

### **Continuity of residence - Breaks during 5 year qualifying period**

C1796 Detailed guidance in relation to temporary absences from the UK that do not break continuity of residence during the 5 year qualifying period can be found at ADM C1773. In general, temporary absences from the UK will not break the continuity of residence<sup>1</sup> if they

- 1.** are no more than a total of 6 months a year **or**
- 2.** comprise of one absence of up to a maximum of 12 consecutive months for important reasons, such as pregnancy and childbirth, serious illness, study or vocational training, or a posting to another country abroad **or**
- 3.** are for compulsory military service.

Although these absences do not break the continuity of the residence requirement, they do not count towards the accrual of the 5 years continuous residence<sup>2</sup>. This is because these absences will generally be periods when the claimant is not exercising a right to reside as defined within the EEA regulations.

1 Directive 2004/38/EC, Art. 16(3); 2 CIS/2258/08

### **Permanent residence with less than 5 years residence**

C1797 The general rule on the right of permanent residence requires that EEA nationals and their family members have resided legally in the UK for a continuous period of 5 years (see ADM C1750 et seq). Workers or S/E persons and their family members, who have ceased activity, can acquire a right to reside in the UK permanently without that 5 year requirement<sup>1</sup> (see ADM C1615 to C1620).

**Note:** With regard to a family member, who retains the right of residence<sup>2</sup>, see ADM C1778.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(c\) & \(d\)](#); 2 [reg 15\(1\)\(f\) & reg 10](#)

C1798 A worker or S/E person who has ceased activity is a person who satisfies the conditions in ADM C1799, C1800, C1801 or C1802, and can acquire the right to reside in the UK permanently with less than 5 years residence.

**Note:** This also applies to the family member of a worker or S/E person in ADM C1803.

C1799 A worker or S/E person who

- 1.** ceases activity as a worker or S/E person **and**
- 2.** has reached the age at which they are entitled to a state pension on the date their work ceases or in

the case of a worker, ceases working to take early retirement **and**

**3.** was working in the UK, as a worker or S/E person, for at least 12 months prior to ceasing work **and**

**4.** resided in the UK continuously for more than 3 years prior to ceasing work<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 5\(2\)](#)

C1800 A worker or S/E person who

**1.** ceases activity in the UK as a worker or S/E person as a result of a permanent incapacity to work **and**

**2.** either

**2.1** that person resided in the UK continuously for more than 2 years prior to ceasing work **or**

**2.2** the incapacity is the result of an accident at work or an occupational disease that entitles that person to a pension payable in full or in part by an institution in the UK<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 5\(3\)](#)

C1801 A worker or S/E person who

**1.** is active in an EEA state, but retains their place of residence in the UK, to which they return (as a rule) at least once a week **and**

**2.** prior to becoming active in that EEA state, had been continuously resident and continuously active as a worker or S/E person in the UK for at least 3 years<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 5\(4\)](#)

C1802 A person who satisfies the condition in paragraph C1801 **1.** but not C1801 **2.** shall, for the purposes of C1799 and C1800, be treated as being active and resident in the UK during any period that they were working or S/E in the EEA state<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 5\(5\)](#)

C1803 The family member of a worker or S/E person where

**1.** the worker or S/E person has died **and**

**2.** the family member resided with the worker or S/E person immediately before their death **and**

**3.** the worker or S/E person has resided continuously in the UK for at least 2 years immediately before their death, or the death was a result of an accident at work or occupational disease<sup>1</sup>.

**Note 1:** For guidance in relation to family members of British citizens – see ADM C1599.

**Note 2:** For guidance in relation to extended family members – see ADM C1737 – C1738.

1 [Imm \(EEA\) Regs 2016, reg 15\(1\)\(e\)](#)

### **Periods of residence prior to 30.4.06**

C1804 In accordance with the CJEU judgments in Lassal and Dias, periods of residence prior to 30.4.06 (the date of transposition of Directive 2004/38) which were in accordance with earlier EU instruments relating to residence must be taken into account for the purposes of acquisition of permanent residence under Directive 2004/38 (see ADM C1774). However, where a period of residence in accordance with the earlier EU instruments is followed by a period of more than 2 years during which the person's residence is not in accordance with earlier EU instruments, then the earlier period of residence will not count (see ADM C1776).

**Note:** Subject to ADM C1773, a break in continuity during which residence is not in accordance with the Imm (EEA) Regs 2016 will mean that the 5 year period has to be served afresh.

### **Derivative right of residence**

C1805 Residence in the UK, which is a result of a derivative right of residence does not count towards the period for calculation of the 5 year period for permanent residence<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 15\(2\)](#); Alarape and Tijani (C-529/11)

### **Long-term jobseeker**

C1806 Guidance at ADM C1403 advises that EEA jobseekers who have retained worker status and have registered with Jobcentre Plus will have a right to reside for an initial period of 6 months<sup>1</sup>. If the claimant is able to provide compelling evidence that they are continuing to seek employment and have a genuine chance of being engaged, a short extension period of UC may be allowed (ADM C1415 – C1416).

1 Directive 2004/38/EC, Art 14(4)(b); Antonissen (C-292/89); [Imm \(EEA\) Regs 2016, regs 6\(1\) & 14](#)

C1807 [[See Memo ADM 29/20](#)] [[See Memo ADM 08/21](#)] Where a claimant is relying entirely on a right to reside as a jobseeker for the entire 5 year period for calculating permanent residence, it should be accepted that the immigration regulations<sup>1</sup> would be satisfied in those circumstances. This is because an EEA national acquires the right to reside in the UK permanently, where they have resided in the UK, in accordance with the immigration regulations for a continuous period of 5 years. Where a claimant has been awarded JSA(IB) on the basis of having a right to reside as a jobseeker, it should be accepted that their continuous period of 5 years of pure jobseeking would be sufficient for the acquisition of permanent residence.

**Note:** With effect from 1.1.14, an EEA national cannot have a right to reside as a retained worker for

longer than their relevant period, unless they provide compelling evidence that they are continuing to seek employment and have a GPoW<sup>2</sup> (see ADM C1410). As such, unless they can demonstrate an alternative right to reside, their right to reside as a retained worker would cease at the end of their relevant period and they would no longer be residing legally in the UK.

[1 Imm \(EEA\) Regs 2016, reg 15\(1\)\(a\); 2 reg 6\(7\)](#)

## **Evidence to demonstrate permanent residence**

C1808 The following documents may be evidence that can be used when determining whether a person has gained a permanent right to reside

- 1.** valid passport or ID card
- 2.** marriage or civil partnership certificates
- 3.** P60s, contracts or letters of employment for workers
- 4.** business accounts & tax returns for S/E persons
- 5.** leases for premises used to conduct business
- 6.** utility bills
- 7.** document certifying permanent residence (issued by the HO) where the person is an EEA national – this document does not carry a date of expiry
- 8.** permanent residence card (issued by the HO) where the person is a non-EEA national – this document is valid for 10 years from the date of issue and must be renewed upon application.
- 9.** comprehensive sickness insurance (see ADM C1730 or C1734) where the EEA national claims to have resided in the UK as a self-sufficient person or student
- 10.** Bank statements showing self-sufficiency
- 11.** evidence of study
- 12.** where the family member of an EEA national applies on the basis that the EEA national is a worker or S/E person who has ceased activity, they must supply
  - 12.1** evidence confirming the relationship **and**
  - 12.2** documentation confirming their EEA family member was employed or S/E prior to retirement or becoming permanently incapacitated **and**
  - 12.3** documentation confirming permanent incapacity (where appropriate)



**13.** where the family member of an EEA national applies on the basis that the EEA national has died, they must supply

**13.1** the death certificate of the EEA national **and**

**13.2** evidence confirming the relationship **and**

**13.3** evidence that the EEA national had resided continuously in the UK for at least 2 years prior to death, or evidence that the death was as a result of an accident at work or occupational disease **and**

**13.4** evidence that they were residing in the UK with the EEA national immediately prior to the EEA national's death

**14.** Worker registration or Worker Authorisation documents in cases where the claimant is an accession state national who worked during the relevant accession period.

**Note 1:** For the purposes of **7.** and **8.**, documents cease to be valid if the holder ceases to have a right of permanent residence. This can happen when the right to reside is lost through absence from the UK for a period exceeding 2 consecutive years.

**Note 2:** For the purposes of **12.** and **13.**, the family member could be an EEA national or non-EEA national.

This is not an exhaustive list.

### **Claimant unable to provide original documentary evidence**

C1809 The claimant has primary responsibility to provide original documentary evidence of their nationality, continuous residence and their qualifying status, throughout the 5 year period within which they wish to confirm that they have met the conditions for permanent residency. If the claimant has not provided sufficient evidence to the DM to confirm their status, the conditions for permanent residency will not be met.

C1810 DMs should also utilise additional records available to them, to confirm whether or not the conditions for permanent residency have been met. For example: National Insurance Contribution records.

C1811 Where the claimant declares that they may have acquired a right to permanent residency, but they are awaiting documentation to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

### **Moving between alternate rights to reside**

C1812 Where a qualified person switches their status to that of another qualified person, the DM has the discretion to allow a period of up to 30 days, so that the gap between the claimant's statuses does not break the continuity of acquisition of a permanent right of residence.

C1813 A cumulative break of up to 30 days in any 12 month period is allowable when switching between rights to reside, for example student to worker, worker to S/E person, S/E person to jobseeker, or between the end of one job and the start of the next. In such circumstances, the claimant will be required to provide evidence of

- 1.** acquiring another right to reside as a jobseeker, worker, S/E person, student or self-sufficient person (or as a dependent) within 30 days of their previous right to reside ending **and**
- 2.** acquiring a right to reside as a jobseeker, worker, S/E person, student, or self-sufficient person (or as a dependent) for the remainder of the 5 year period of continuous residence.

**Note 1:** Any work activity carried out must be genuine and effective.

**Note 2:** For accession state nationals, work carried out during the accession period must be in accordance with the accession regulations (see ADM C1837 & C1838).

**Note 3:** Periods of residence as a Saint Prix worker (see ADM C1510 – C1528) would count towards permanent residence.

### **Example 1**

Giovanni is an Italian national. He arrived in the UK as a single person on 1.6.10. He claimed JSA as a jobseeker on 3.6.10 and signed off to start full time work as a retail assistant on 3.7.10. On 28.2.12 his employer closed down the shop and terminated Giovanni's contract. Giovanni claimed JSA on 25.3.12 but was unsuccessful in finding work and signed off on 10.8.12. He started a F/T course as a student on 3.9.12 and took out a comprehensive sickness insurance policy. The course ended on 6.8.15 and Giovanni made a claim to UC the next day. The DM decided that Giovanni had acquired a permanent right to reside as he had demonstrated 5 years continuous residence as a qualified person, and the break between his right to reside as a retained worker and a student maintained continuity as the break was within 30 days.

### **Example 2**

Greta is a Dutch national. She arrived in the UK as a single person and started F/T work as a barista on 30.6.10. She continued to work F/T until 2.2.14 and then decided to leave. The next day she claimed JSA. The DM decided she was a jobseeker and informed her that she would be subject to a GPoW interview if she was still claiming JSA in 6 months time. Greta began receiving JSA(C) until it exhausted on 6.8.14. She found a F/T job as a receptionist which was due to start on 1.11.14. Greta presented this evidence at her GPoW interview and was awarded an extension of JSA(IB) until 31.10.14. Greta left her job on 31.7.15 and claimed UC. The DM decided that Greta had acquired a permanent right to reside as she had demonstrated 5 years continuous residence as a qualified person. Greta was treated as a jobseeker for the period 3.2.14 – 31.10.14 as she had demonstrated she was actively seeking employment and had a genuine chance of engagement throughout that period.

C1814 A break, as described within C1812 and C1813, would not be allowable when the break is within a single right to reside, such as a jobseeker. This is because the claimant, in those circumstances, has failed to comply with the requirements to demonstrate that right continuously (see C1821 with regard to disallowances).

## **Imprisonment**

C1815 Periods of imprisonment by an EEA national (or their family member) interrupt continuity of residence<sup>1</sup> for the purposes of satisfying the Residence Directive<sup>2</sup>.

1 MG (C-400/12); Onuekwere(C-378/12); 2 Directive 2004/38/EC, Art. 16(3)

C1816 The CJEU in MG point out that the imposition of a custodial sentence by a national court is an indication that the person concerned has not respected the values expressed by the society of the host Member State in its criminal law. Accordingly the taking into consideration of periods of imprisonment, for the purposes of the acquisition of the right of permanent residence, would clearly be contrary to the aim pursued by the Directive in establishing that right of residence.

C1817 The CJEU in Onuekwere also found that the continuity of residence of 5 years is interrupted by periods of imprisonment in the host Member State. As a consequence, periods which precede and follow the periods of imprisonment may not be added up to reach the minimum period of 5 years required for the acquisition of a permanent residence permit. Therefore upon release from prison, a person must satisfy a new 5 year period, in order to acquire permanent residence status. The period of imprisonment does not count towards a permanent right to reside because it is a period when the claimant was not exercising a right to reside, nor exercising free movement rights.

C1818 – C1819

## **Sanctions & Disallowances of UC**

C1820 In the case of a sanction, payment of UC is removed for a fixed period of time, but entitlement may continue. So where the EEA national has not yet reached their GPoW assessment interview, they would still get their 6 months as a retained worker. The period of the sanction would not break continuity for the calculation towards the 5 year period for permanent residence.

**Note:** For guidance on all sanctions in UC, see ADM Chapters K1 – K9

C1821 In the case of a disallowance, the UC award ends. If the disallowance is for a fixed period, the claimant will have to reclaim UC once the disallowance has ended. A period of disallowance would therefore break the continuity for the calculation towards the 5 year period for permanent residence.

## **Separation from EEA partner**

C1822 Family members have an automatic right of residence in the UK for as long as they remain the family member of an EEA national<sup>1</sup> who

**1.** is entitled to reside in the UK for an initial period of three months **or**

**2.** is a qualified person **or**

**3.** has a right of permanent residence (ADM C1735).

The meaning of family member<sup>2</sup> includes (amongst others) a spouse or civil partner (ADM C1736 **1.**)

[1 Imm \(EEA\) Regs 2016, reg 14\(2\); 2 reg 7\(1\)\(a\)](#)

C1823 Where there has been a breakdown in the relationship and the spouse or civil partner no longer live in the same household as the EEA national, the spouse or civil partner is still considered to be a family member for as long as

**1.** the relationship between the spouse or civil partner and the EEA national has not been dissolved **and**

**2.** the EEA national continues to be a qualified person, or have a permanent right to reside<sup>1</sup>.

If they later get divorced or legally terminate their civil partnership, the spouse or civil partner will only have a right to live in the UK if they satisfy the conditions<sup>2</sup> relating to a family member who has retained the right of residence (ADM C1778).

**Note:** The breakdown in the relationship can also include a child under the age of 21, who is estranged from their parents. Such a child remains a family member without being in the same household<sup>3</sup>.

[1 Imm \(EEA\) Regs 2016, reg 14\(2\); Diatta \(C-267/83\); 2 Imm \(EEA\) Regs 2016, reg 10; 3 reg 7\(1\)\(b\)\(i\)](#)

C1824 Where there has been a breakdown in the relationship and the claimant wishes to demonstrate permanent residence, the onus is on the claimant to provide documentary evidence of their EEA national sponsor. Where the claimant has been the victim of domestic violence (see ADM Chapter J3) and so cannot provide anything other than oral evidence to demonstrate their residency status, the DM should adopt a pragmatic approach. It must be remembered that a claimant's oral statement is evidence (ADM A1400). Where oral evidence is the only evidence available, the DM must decide on the balance of probability (ADM A1343) whether the claimant has discharged the burden of proof (ADM A1405 et seq).

**Note:** This guidance does not cover a couple who are LTAMC.

C1825 – C1826

## **Primary Carer – Child in education**

### **Introduction**

C1827 Certain children and their primary carers have a right to reside in the UK. This is known as a derivative right to reside. The guidance below describes the conditions for this right to reside. A primary

carer satisfying those conditions satisfies the requirement that they have a right to reside in the CTA. However they have to be actually habitually resident in the CTA (see C1946 et seq).

**Note:** Periods of residence in the UK as a result of a derivative right to reside do not count towards the 5 year qualifying period needed to acquire a permanent right of residence.

### **Meaning of “exempt person”**

C1828 In the paragraphs C1832 & C1834 below “exempt person” means<sup>1</sup> a person

- 1.** who has a right to reside in the UK as a result of any provision in the Imm (EEA) regs 2016 other than a derivative right to reside<sup>2</sup> **or**
- 2.** who has a right of abode in the UK by virtue of specific legislation<sup>3</sup> (which includes British citizens) **or**
- 3.** to whom specific legislation<sup>4</sup> exempting certain persons from the requirement to have leave to enter or remain applies (for example certain aircrew & seamen who are under an engagement requiring them to leave within 7 days and certain diplomats) **or**
- 4.** who has indefinite leave to enter or remain in the UK.

1 [Imm \(EEA\) Regs 2016, reg 16\(7\)\(c\)](#); 2 [reg 16](#); 3 Immigration Act 1971, s 2; 4 s 8

### **Meaning of “primary carer”**

C1829 A person is to be regarded<sup>1</sup> as the primary carer of another person (“the child”) if they are a direct relative or legal guardian of the child **and**

- 1.** they have primary responsibility for the child’s care **or**
- 2.** they share equally the responsibility for the child’s care with one other person (“the joint primary carer”).

**Note 1:** the term “direct relative” is not defined in the Imm (EEA) Regs but should be taken as including direct relatives in the ascending line (i.e. parents, grand parents, great grandparents) of the child, but not uncles, aunts, cousins etc.

**Note 2:** a person is not be regarded as having responsibility for a person’s care on the sole basis of a financial contribution towards that person’s care<sup>2</sup>.

**Note 3:** where there is another person who is able and willing to assume to continue primary day to day care of the child, this is a relevant factor, but is not in itself sufficient ground for concluding whether or not an EU citizen would be compelled to leave their own country or territory of the EU as a whole<sup>3</sup>.

1 [Imm \(EEA\) Regs 2016, reg 16\(8\)](#); 2 [reg 16\(11\)](#); 3 Chavez-Vilchez (C- 133/15)

## Sharing equal responsibility

C1830 Two people should be considered to share equally the responsibility for a child when they both have responsibility for the care and welfare of the child, both long-term and on a day to day basis. This may include

1. deciding where the child lives
2. choosing what school the child attends
3. providing for the child's education
4. deciding how and where the child spends time outside of school
5. looking after the child's property
6. disciplining the child
7. authorising medical treatment
8. authorising school trips.

This is not an exhaustive list.

C1831 Two people who spend different amounts of time with a child may still have equal responsibility for that child. Equal responsibility does not mean there has to be evidence of an equal sharing of responsibilities (as this is not always practical). Each case should be considered on its individual merits.

### Example 1

Child resides with mother during the week, and resides with father at weekends. Unless there is evidence to indicate that the father is unable to care for the child at all, it can be accepted that both parents share equal responsibility<sup>1</sup>.

*1 [Imm \(EEA\) Regs 2016, reg 16\(8\)\(b\)\(ii\)](#)*

### Example 2

Child resides with the mother full-time, but father has regular contact. Whilst the father may not provide the majority of care for the child, the father is actively involved in the child's life and continues to have parental responsibility for the child. Unless there is evidence to indicate that the father is unable to care for the child at all, it can be accepted that both parents share equal responsibility<sup>1</sup>.

*1 [Imm \(EEA\) Regs 2016, reg 16\(8\)\(b\)\(ii\)](#)*

## Derivative Rights to Reside

C1832 A person who is not an exempt person has a derivative right to reside<sup>1</sup>

### Self sufficient child

**1.** where that person<sup>2</sup> is the primary carer of an EEA national **and** that EEA national

**1.1** is under the age of 18 **and**

**1.2** is residing in the UK as a self-sufficient person **and**

**1.3** would be unable to remain in the UK if the primary carer left the UK for an indefinite period

**Note:** The child must be self sufficient (see C1728 et seq) The primary carer is treated as a family member of the child<sup>3</sup> so the child and the primary carer must have sufficient combined resources to ensure that the primary carer does not become a burden on the social assistance system of the UK during their period of residence. Equally both must have comprehensive health insurance cover.

### Person in general education

**2.** where<sup>4</sup>

**2.1** any of the child's parents is an EEA national who resides or has resided in the UK **and**

**2.2** both the child and EEA national parent reside or have resided in the UK at the same time and during such a period of residence, the EEA national parent has been a worker in the UK (see paragraph C1837 below) **and**

**2.3** the child is in general education (see paragraph C1835 below) in the UK

**Note 1:** The EEA national who has worked or been a worker must be the parent of the child(ren) (see **2.2** above). A derivative right of residence does not arise where the worker is a grandparent.

**Note 2:** From 1.2.17, where a child of an EEA national has a derivative right to reside because they are in education in the UK, the EEA national parent does not have to have been resident when the child first entered education (see **2.3** above)

### Primary carer of a person in general education

**3.** where<sup>5</sup>

**3.1** that person is the primary carer (see C1829) of a person in general education in the UK who satisfies the conditions in sub-paragraph **2.** above **and**

**3.2** that person in education would be unable to continue to be educated in the UK if the primary carer left the UK for an indefinite period (but see C1834 for how this rule applies where there are

joint primary carers).

## Dependant children of a primary carer

### 4. where<sup>6</sup>

**4.1** that person (“the child”) is under the age of 18 **and**

**4.2** the child does not have leave to enter, or remain in the UK **and**

**4.3** the child’s primary carer is entitled to a derivative right to reside in the UK as the primary carer of a person in education in accordance with sub paragraph **3.** above **and**

**4.4** the child’s primary carer would be prevented from residing in the UK if the child left the UK for an indefinite period.

1 [Imm \(EEA\) Regs 2016, reg 16\(1\)](#);

2 reg 16(2); Case C-200/02 Zhu and Chen v Secretary of State for the Home Department;

3 [Imm \(EEA\) Regs 2016, reg 4\(5\)](#); 4 [reg 16\(3\)](#); NA (Pakistan)(C-115/15) Reg (EEC) 1612/68, art 12);

5 [Imm \(EEA\) Regs 2016, reg 16\(4\)](#); Case C-310/08 Ibrahim v London Borough of Harrow and Secretary of State for the Home Department; Case C-480/08 Teixeira v London Borough of Lambeth and

Secretary of State for the Home Department); 6 reg 16(6);

### Example

Lucia is a Spanish national. She entered the UK in July 2012 with her husband Hugo, also a Spanish national. Hugo worked in the UK but Lucia did not. The couple have a child, Alba born on 25.8.2003 who started primary school in the UK in September 2012. Alba is a Spanish national. In March 2013 the couple separated and Hugo returned to Spain. Lucia claimed UC in April 2013. The DM decided that Lucia had a right to reside in the UK as Alba’s primary carer in accordance with C1832.3 above. It was evident that Alba would not be able to continue his general education in the UK if his mother and sole carer had to leave the country.

### Best interest of the child

C1833 A DM should consider all of the information and evidence provided, concerning the best interests of the child<sup>1</sup> in the UK, when assessing whether a relevant child would be unable to remain or be educated in the UK if the primary carer left the UK for an indefinite period. The assessment must take account of all their specific circumstances including

**1.** the age of the child **and**

**2.** the child’s physical and emotional development **and**



**3.** the extent of the child’s emotional ties to both the third country national parent and the EEA national parent **and**

**4.** the risks, which separation from the third country national parent might entail for the child’s equilibrium.

This is not an exhaustive list.

*1 Chavez-Vilchez and Others (C-135/15)*

## **Application to joint primary carers**

C1834 Where there are joint primary carers, the condition described in paragraph C1832.**3.2** is that the child would be unable to continue to be educated in the UK if **both** joint primary carers were required to leave the UK<sup>1</sup>. However this condition does not apply if<sup>2</sup> one of the joint primary carers had acquired a derivative right to reside as a sole primary carer before sharing responsibility for care with a joint primary carer.

[1 Imm \(EEA\) Regs 2016, reg 16\(9\)](#); [2 reg 16\(10\)](#)

## **Meaning of “general education”**

C1835 General education can include up to and including university or similar courses and vocational courses, but the primary carer’s right to reside set out in C1832.**2**, generally ends when the child reaches the age of majority. This is 18 in the UK<sup>1</sup>. However it can continue beyond that age if the child continues to need the presence and care of that parent in order to be able to complete their education<sup>2</sup>. General education excludes nursery education but does not exclude education received before compulsory school age where that education is equivalent to the education received at or after compulsory school age<sup>3</sup>. It usually starts around age 5. A primary carer of the child of an EEA national who has been employed in the host Member State is entitled to a derivative right to reside once that child has entered into reception class education<sup>4</sup>.

1 Family Law Reform Act 1969, s 1 Age of Majority (Scotland) Act 1969;

2 *Teixeira v London Borough of Lambeth* CJEU Case C-480/08 (para 87);

3 [Imm \(EEA\) Regs 2016, reg 16\(7\)\(a\)](#); 4 *Shabani* [2013] UKUT 315 (IAC)

## **Meaning of “worker”**

C1836 In C1832.**2.2** above a “worker” does not include<sup>1</sup> a jobseeker or a person who, on stopping work retains worker status in the circumstances described in C1392 & C1393. It also does not include a self employed person<sup>2</sup>.

**Note:** see C1361 to C1363 for guidance on when a person is a worker

2 Secretary of State for Work and Pensions v Lucja Czop (C-147/11) and Margita Punakova (C-148/11);  
RM v Secretary of State for Work and Pensions (IS) [2014] UKUT 401 (AAC) [2015] AACR 11

C1837 Work carried out by a national of another Member State before that Member State joined the EU cannot trigger a right under C1832<sup>1</sup>. Where an A8 or A2 national has been employed in the UK on or after the date of accession, they may be a “worker” for the purposes of a derivative right to reside if it is for an authorised employer, or the migrant worker is otherwise exempt from the requirement to register or seek authorisation. The A2/A8 national does not have to complete 12 months registered or authorised work in order to be regarded as a worker for the purposes of the derivative right to reside<sup>2</sup>.

1 Reg (EEC) 1612/68, Art 12; 2 S of S for W & P v JS (IS) [2010] UKUT 347 (AAC)

C1838 An A8 national is working for an authorised employer in the first month of any employment in the UK starting on or after 1.5.04<sup>1</sup>, even if it is not subsequently registered: but an A2 national must seek authorisation before starting employed work in the UK<sup>2</sup>. From 1.5.09 A8 nationals have full EU rights and do not need to register any work.

**Note:** The Supreme Court<sup>3</sup> held that the extension of the A8 Worker Registration Scheme from 1.5.09 to 30.4.11 was disproportionate and unlawful.

1 Accession Regs 2004, reg 7(3); 2 Accession Regs 2006, reg 9; 3 SSWP v. Gubeladze [2019] UKSC 31

## **Self-employed Parent**

C1839 A derivative right to reside under C1832 can only apply where there is an EEA national parent who resided in the UK as a “worker” i.e. those who are in genuine and effective work that is more than marginal and ancillary and are under the direction of another (see C1360 to C1362). It does not therefore apply to those who are genuinely self-employed i.e. employed on their own account<sup>1</sup>.

1 Secretary of State for Work and Pensions v Lucja Czop (C-147/11) and  
Margita Punakova (C-148/11). at para 33

## **Derivative residence card**

C1840 A derivative residence card is a card issued to a person as proof of the holder’s derivative right to reside as at the date of issue<sup>1</sup>. The card can also take the form of a stamp in the person’s passport. The card or stamp will be valid for five years or until a specified date and can be renewed upon application. However the card itself does not confer a derivative right to reside which can only arise from satisfaction of the conditions in C1832.

## Deportation orders

C1841 An EEA national (or family member of an EEA national) may be deported from the UK, where it is decided that the person's removal is justified on the grounds of public policy, public security or public health<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 23\(6\)\(b\); Immigration Act 1971, s 3\(5\), s.5 & Sch 3](#)

C1842 A person exercising a right to reside under the Imm (EEA) Regs 2016 (for example, a permanent right of residence) continues to hold that status until such time as a deportation order is served<sup>1</sup>.

**Note:** DMs should note that the serving of the deportation order invalidates any leave to remain in the UK<sup>2</sup>.

1 [Imm \(EEA\) Regs 2016, reg 23\(9\); 2 Immigration Act 1971, Sch 3, para 2\(2\)](#)

C1843 – C1850

# Persons to be treated as not “in GB” C1851 - C1869

[Initial Right of Residence under EU law C1852 - C1853](#)

[EEA jobseekers C1854 - C1859](#)

[Parents of British citizen children C1861 - C1862](#)

[EU Citizenship rights C1863 - C1869](#)

**[\[See Memo ADM 29/20\]](#)** **[\[See Memo ADM 08/21\]](#)**

C1851 The starting point is that a person is to be treated as not being in GB if he does not have a right to reside (or is not habitually resident) in the CTA<sup>1</sup>. However the regulations go on to say that certain rights to reside described do not count<sup>2</sup>. The following paragraphs give details of those excluded rights to reside.

1 UC Regs, reg 9(1); 2 reg 9(2)

## Initial Right of Residence under EU law

C1852 All EEA nationals and their family members have the right to reside in any other Member State for a period of three months<sup>1</sup>.

1 Imm (EEA) Regs 2016, reg 13

C1853 **[\[See Memo ADM 29/20\]](#)** **[\[See Memo ADM 08/21\]](#)** Persons who have a right to reside solely on the basis of the initial three month residence right referred to above do not satisfy the right to reside requirement of the habitual residence test and so are to be treated as not in GB<sup>1</sup> and therefore not satisfying the basic conditions for entitlement to UC.

1 UC Regs, reg 9(3)(a)

## EEA jobseekers

C1854 Amendments are made to the UC entitlement condition that claimants must be in GB<sup>1</sup>. EEA nationals who are jobseekers and their family members with a right to reside in the UK will no longer be treated as being habitually resident in the CTA and therefore are not in GB for the purposes of UC entitlement<sup>2</sup>. These amendments also ensure that those EEA nationals who are entitled to UC are allocated to appropriate WRA groups on the same basis as all other UC claimants.

1 WRA 2012, s 4(1)(c) & s.4(5)(a); 2 UC Regs, reg 9

C1855 Claimants can only satisfy the basic UC entitlement condition of being in GB if they are also habitually resident in the CTA<sup>1</sup> (see C1225).

1 UC Regs, reg 9(1)

C1856 Claimants can only be regarded as habitually resident if they have a legal right to reside in the CTA<sup>1</sup>. However, certain rights are excluded for this purpose<sup>2</sup> (see C1851).

1 UC Regs, reg 9(2); reg 9(3)

C1857 From 10.6.15, the right to reside as an EEA national jobseeker or family member of an EEA national jobseeker is added to the list of exclusions<sup>1</sup> (see C1852 to C1865). A person to whom this exclusion applies therefore cannot meet the habitual residence test and will not be treated as being in GB, so will not be entitled to UC.

1 UC regs, reg 9(3)(aa)

C1858 From 10.6.15, guidance at ADM C1710 **1.** and C1711 in respect of EEA jobseekers should no longer be followed.

C1859 EEA nationals who are in the UK

**1.** working for an employer and retain their worker status (see C1391 et seq) during periods of

**1.1** involuntary unemployment **or**

**1.2** vocational training **or**

**1.3** temporary incapacity for work (see C1391) **or**

**2.** working as a S/E person and retain their worker status during periods of temporary incapacity for work (see C1475) **or**

**3.** as a student (see C1732) **or**

**4.** as a self-sufficient person (see C1728 to C1730)

are not affected by this amendment.

**Note:** A person who retains their worker status, after having worked as an employee and then becoming involuntarily unemployed (see C1394 **1.**) will cease to have a right to reside as a retained worker after 6 months. This is unless they provide compelling evidence that they are continuing to seek employment and have a GPoW.

## Existing award of UC

C1860 Where there is an existing award of UC, the change takes effect (for the purposes of that award)

- 1.** on 10.6.15, if there is an assessment period (see ADM E2110) for that award that begins on that day **or**
- 2.** if **1.** above does not apply, on the first day of the next assessment period for the award that begins after that date<sup>1</sup>.

**Note:** Existing award of UC means an award that exists on 10.6.15<sup>2</sup>.

1 Universal Credit (EEA Jobseekers) Amendment Regulations 2015, reg 1(2); 2 reg 1(3)

## Parents of British citizen children

C1861 [\[See Memo ADM 30/20\]](#) [\[See Memo ADM 07/21\]](#) [\[See Memo ADM 19/21\]](#) A person who is not an “exempt person” has a derivative right to reside in the UK if<sup>1</sup>

- 1.** they are the primary carer of a British citizen **and**
- 2.** that British citizen is residing in the UK **and**
- 3.** that British citizen would be unable to reside in

**3.1** the UK **or**

**3.2** another EEA state or Switzerland

if the person (i.e. the primary carer) left the UK for an indefinite period.

1 Imm (EEA) Regs 2016, reg 16(1) & (5)

C1862 [\[See Memo ADM 29/20\]](#) [\[See Memo ADM 08/21\]](#) A person who has a right to reside solely on the basis of paragraph C1861 above is an **excluded** right to reside<sup>1</sup>. Such a person will therefore not satisfy the right to reside element of the habitual residence test, will be treated as not in GB and therefore will not satisfy the basic conditions for entitlement to UC.

**Note:** The regulations described in C1861 and in this paragraph were introduced with effect from 8.11.12 because of a judgment of the CJEU dated 8.3.11 (“the Zambrano judgment”)

1 UC Regs, reg 9(3)(b)

## EU Citizenship rights

C1863 EU case law has established the principle that in certain circumstances a third country national may have a right to reside where to deny that right would mean that an EU citizen would be deprived of

their rights under as an EU citizen under the Treaty<sup>1</sup> to move and reside freely within the territory of the EU. In the Zambrano case<sup>2</sup> the basis of the CJEU's judgment was that, if Mr Zambrano (a third country national) was not granted a right to reside and a work permit in Belgium, the result would be that his dependent children, who were Belgian (and thus EU) citizens, would be deprived of the genuine enjoyment of the substance of their rights as EU citizens under article 20 of the Treaty<sup>1</sup>.

1 TFEU, art 20; 2 Ruiz Zambrano v Office national de l'emploi (ONEm) Case C-34/0

C1864 [[See Memo ADM 29/20](#)] [[See Memo ADM 08/21](#)] A right to reside which exists in accordance with the Treaty<sup>1</sup> where that right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Citizen is an excluded right to reside<sup>2</sup>.

1 TFEU, art 20; 2 UC Regs, reg 9(3)(b)

C1865 So, a person claiming UC whose sole right to reside is the right described in paragraph C1863 above will not satisfy the right to reside condition of the habitual residence test. Such a person will therefore be treated as not being in GB and will therefore not satisfy the basic conditions of entitlement to UC.

C1866 – C1869

# EU Settlement Scheme (EUSS) C1870 - C1923

[Introduction](#) C1870

[Settled Status – Indefinite Leave to Remain](#) C1871

[Pre-settled Status – Limited Leave to Remain](#) C1872 - C1873

[EUSS Couple Claims](#) C1874 - C1923

## Introduction

[\[See Memo ADM 29/20\]](#)[\[See Memo ADM 30/20\]](#)[\[See Memo ADM 34/20\]](#)[\[See Memo ADM 08/21\]](#)  
[\[See Memo ADM 19/21\]](#)

C1870 A new right to reside has been created for EEA nationals in Appendix EU to the Immigration Rules made under the Immigration Act 1971. Applicants to the EUSS can be granted by the Home Office for either

1. Indefinite Leave to Enter (ILE)/Indefinite Leave to Remain (ILR) (“settled status”) **or**
2. Limited Leave to Enter (LLE)/Limited Leave to Remain (LLR) (“pre-settled status”).

## Settled Status – Indefinite Leave to Remain

C1871 Where a claimant has been granted ILR i.e. settled status under the EUSS, they will satisfy the right to reside element of the Habitual Residence Test for the purposes of claiming UC.

**Note:** It is not necessary for DMs to apply the Imm (EEA) Regs 2016 where the claimant has been granted ILR, as the claimant does not need a qualifying right to reside.

## Pre-settled Status – Limited Leave to Remain

[\[See Memo ADM 01/22\]](#)

C1872 Where a claimant has been granted LLR i.e. pre-settled status under the EUSS, they will not automatically have a right to reside which is relevant for the purposes of claiming UC<sup>1</sup>. The claimant is still required to demonstrate that they are exercising a qualifying right to reside under the Imm (EEA) Regs 2016, such as worker status, self-employed status or permanent residence.

**Note:** HRT DMs must continue to apply the Imm (EEA) Regs 2016 for claims from EEA nationals and their family members who have been granted LLR or have yet to apply for settled status.



C1873 Specified legislation<sup>1</sup> provides that a person is to be treated as not being in Great Britain, if that person is not habitually resident in the CTA (see ADM C1225). No person shall be treated as habitually resident without having a relevant right to reside in the place where that person is living<sup>2</sup>. Those relevant rights to reside do not include (amongst others<sup>3</sup>) a right which exists by having been granted limited leave to enter or remain in the UK by virtue of

**1.** Appendix EU to the Immigration Rules<sup>4</sup> **or**

**2.** being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the Immigration Rules<sup>5</sup>.

**Note:** Although the claimant has been granted LLR (which is not a right to reside that allows access to income-related benefits) they may still be able to exercise a qualifying right to reside under the Imm (EEA) Regs 2016.

*1 UC Regs, reg 9(1); 2 reg 9(2); 3 reg 9(3); 4 reg 9(3)(c)(i); 5 reg 9(3)(c)(ii)*

## **EUSS Couple Claims**

C1874 Each member of the EUSS couple has to satisfy the habitual residence test in their own right. A family member of an EEA national will not be able to derive rights from that person's status under the EUSS. This is because settled status is granted under UK Immigration Rules which do not provide for derived or derivative rights. The family member may be eligible for settled status or pre-settled status under the EUSS in their own right.

C1875 The EEA national will need to exercise a qualifying right to reside under the Imm (EEA) Regs 2016 for a family member to derive rights. While the UK remains in the EU (and until the Imm (EEA) Regs 2016 are revoked), DMs should still apply the Imm (EEA) Regs 2016 to someone who has been granted ILR & LLR in order to check whether a family member can derive a right to reside from them under the Imm (EEA) Regs 2016. Where an EEA national has been granted ILR or LLR, that does not mean that they cannot still rely on the Imm (EEA) Regs 2016<sup>1</sup> (see ADM C 1050).

*1 [Imm \(EEA\) Regs 2016, reg 43 & Sch 3](#)*

C1876- C1923

# Croatian Nationals C1924 - C1945

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## Introduction

C1924 The Republic of Croatia became a member state of the EU on 1.7.13<sup>1</sup> Transitional provisions in the Croatia Treaty<sup>1</sup> allowed EU Member States to impose certain restrictions on the rights to freedom of movement within the EEA<sup>2</sup>, and allowed EU Member States to apply national measures restricting the access of Croatian nationals to the UK's labour market for a limited period, for five years from 1.7.13<sup>3</sup> until 30.6.18.

1 Act concerning the accession of the Republic of Croatia, Art 18 & Annex V;

2 TFEU Art 45 & Reg (EU) 492/11, Arts 1 to 6; 3 Act concerning the accession of the Republic of Croatia, Art 18 & Annex V, section 2, para 2

## Croatian restrictions end

C1925 Employment restrictions that have applied to Croatian nationals since 1.7.13 ceased to have effect on 1.7.18<sup>1</sup>. From that date all Croatian nationals have full EU rights in accordance with Directive 2004/38/EC.

1 Croatia (I&WA) Regs 2013, reg 1(2)

C1926 The rights of EEA nationals (and in some circumstances their family members) to reside in the UK are set out in the Imm (EEA) Regs 2016. The Croatia (I & WA) Regs 2013 limited those rights to reside and set out the measures restricting access to the UK's labour market in the case of Croatian nationals.

## The Two Groups

C1927 For the purposes of entitlement to UC, Croatian nationals fell into two main groups

1. persons who were subject to worker authorisation **and**
2. those who were exempt from the requirement for worker authorisation

### Croatian nationals who were subject to worker authorisation

C1928 Unless they come within the exempt group described in C1934, all Croatian nationals are “accession state nationals subject to worker authorisation”<sup>1</sup>. This means that, in order to be able to work as employed persons in the UK, Croatian nationals subject to worker authorisation from 1.7.13 until 30.6.18 had to apply to the Home Office for a worker authorisation document giving details of the employer they wished to work for. A worker authorisation document was only issued where the Croatian national met the relevant requirements<sup>1</sup>. Those requirements were set out in the “Statement of relevant requirements”, dated May 2013 and published by the Secretary of State for the Home Department.

1 Croatia (I & WA) Regs, reg 2(1)

### Worker authorisation document

C1929 The worker authorisation document was either<sup>1</sup>

1. a passport or other travel document endorsed before 1.7.13 to show that the holder had leave to enter or remain in the UK under the Immigration Act 1971, subject to a condition restricting his employment in the UK to a particular employer or category of employment **or**
2. a worker authorisation registration certificate issued in accordance with the Croatia (I & WA) regs 2013 and endorsed with a condition restricting the holder’s employment to a particular employer and authorised category employment.

1 Croatia (I & WA) Regs 2013, reg 8(2)

### Exemption from the habitual residence test

C1930 With effect from 1.7.13 until 30.6.18, a Croatian national subject to worker authorisation did not have to satisfy the habitual residence test for UC during any period when they<sup>1</sup>

1. held an accession worker authorisation document **and were** working in accordance with the conditions set out in that document.

**or**

2. were a self-employed person in the UK (see C1940 to C1942 for more about self-employment).

**Note:** nonetheless they will have to satisfy the other conditions of entitlement for UC

1 Croatia (I & WA Regs) 2013, reg 5(1) & UC Regs, reg 9(4)(a)

### **Self-employment stops**

C1931 A Croatian national subject to worker authorisation retained the status of being a self-employed person and remained exempt from the habitual residence test<sup>1</sup> if they were temporarily unable to pursue activity as a self-employed person as a result of illness or accident<sup>2</sup>. However If self-employment ceased altogether (on which see C1452) a Croatian national subject to worker authorisation did not have a right to reside as a jobseeker (see C1932.1 below).

1 UC Regs, reg 9(4)(a); 2 [Imm \(EEA\) Regs 2016, reg 6\(4\)](#)

### **Rights to reside**

C1932 From 1.7.13 until 30.6.18, a Croatian national subject to worker authorisation **did not** have a right to reside

**1.** as a jobseeker<sup>1</sup> **or**

**2.** as a person retaining worker status<sup>1</sup> (stated briefly, a person who ceases work as an employed person temporarily because of illness or accident (see C1391) or a person who is in duly recorded involuntary employment and registered at a relevant employment office after working in the UK (see C1392 – C1393).

**Note:** With effect from 1.7.18, Croatian nationals have a right to reside<sup>2</sup> as a person retaining worker status (see ADM 1391 et seq) or as a person retaining the status of a self-employed person (see ADM C1476 et seq).

1 Croatia (I &WA) Regs 2013, reg 5(1); 2 UC Regs, reg 9(4); [Imm \(EEA\) Regs 2016, reg 6\(1\)](#)

### **Self-sufficient persons and students**

C1933 Croatian nationals subject to worker authorisation did have a right to reside as<sup>1</sup>

**1.** self-sufficient persons (see C1728 to C1730) **or**

**2.** students (see C1732).

However these groups need to have sufficient resources not to become a burden on UK social assistance (which includes UC) throughout their period of stay and they must have comprehensive sickness insurance.

1 [Imm \(EEA\) Regs 2016, reg 6\(1\)](#)

## **Croatian nationals who were not subject to worker authorisation**

C1934 A Croatian national was not subject to worker authorisation if

- 1.** on 30.6.13, they had leave to enter or remain in the UK under the Immigration Act 1971 and their immigration status has no condition restricting employment or if they are given leave of this type (including that their immigration status has no condition restricting employment) after 30.6.13<sup>1</sup> **or**
- 2.** they were legally working (See C1935 & C1936) in the UK on 30.6.13 and had been legally working in the UK without interruption (see note) throughout the period of 12 months ending on that date<sup>2</sup> **or**
- 3.** they legally worked (see C1935 & C 1936) in the UK without interruption (see note) for a period of 12 months falling partly or wholly after 30.6.13, at the end of that 12 month period<sup>3</sup> **or**

**Note for sub-paragraphs 2 & 3:** a person shall be treated<sup>4</sup> as having worked without interruption for a period of 12 months provided they were legally working in the UK at the beginning and end of the 12 month period and, if their work was interrupted any intervening period(s) do not exceed 30 days in total.

- 4.** they had dual nationality and were also a national of the UK or an EEA State (other than Croatia)<sup>5</sup>, except that, where the person was also a Bulgarian or Romanian national subject to worker authorisation in accordance with the Accession Regs 2006 , they would only be exempt from worker authorisation as a Croatian national, during any period when they were working in accordance with the Accession regs 2006 **or**

- 5.** during any period in which they were<sup>6</sup>

**5.1** the spouse, civil partner, unmarried or same sex partner (see C1938) of **or**

**5.2** a child under 18 of

a person who has been given leave to enter or remain in the UK under the Immigration Act 1971 where that leave allows that person to work

- 6.** during any period when they were<sup>7</sup> the spouse, civil partner, unmarried or same sex partner (see C1938) of a national of the UK or a person settled in the UK (as defined in specific legislation<sup>8</sup>).

- 7.** during any period when they were<sup>9</sup> a member of a diplomatic mission (or a family member of a member of a diplomatic mission) as defined in specific legislation<sup>10</sup> and other persons who are not British citizens specified in an order of the Secretary of State for the Home Department<sup>11</sup> exempting them from any or all of the provisions of the Immigration Act 1971.

- 8.** they had a permanent right to reside in the UK under the Imm (EEA) Regs<sup>12</sup>.

- 9.** Except where sub-paragraph 10 applies, during any period when they were a family member of an EEA

national who has a right to reside in the UK<sup>13</sup>.

**10.** Where the EEA national with a right to reside in the UK referred to in sub-paragraph **9** is a Croatian national subject to worker authorisation or a Bulgarian or Romanian national subject to worker authorisation (referred to below as “Y”) then only the following family members were not subject to worker authorisation<sup>14</sup>

**10.1** Y’s spouse or civil partner **or**

**10.2** an unmarried or same sex partner of Y (see C1938) **or**

**10.3** a direct descendent of Y or Y’s spouse or civil partner who is

**10.3.a** under 21 **or**

**10.3.b** dependent on Y, Y’s spouse or Y’s civil partner

**11.** they were highly skilled as defined<sup>15</sup> and hold a registration certificate from the HO that included a statement that they have unconditional access to the UK labour market<sup>15</sup>

**12.** during any period when they were a student in the UK and either

**12.1** they held a registration certificate which stated that they were a student who may work in the UK for not more than 20 hours per week (except where they are working, as part of a course of vocational training or during vacations) and provided they comply with those work conditions<sup>16</sup> **or**

**12.2** they had leave to enter or remain under the Immigration Act 1971 as a student provided they were working in accordance with any conditions attached to that leave<sup>17</sup>

**13.** during the 4 months starting from the end of the course where they are a former student who holds a registration certificate (issued before they completed their course) saying that they may work during that period<sup>18</sup>.

**14.** they were a posted worker<sup>19</sup> as defined in specific EU legislation<sup>20</sup>, being a person posted to the UK by an employer based in another EEA state in pursuance of a contract to provide services in the UK.

1 Croatia (I & WA) Regs 2013, reg 2(2); 2 reg 2(3); 3 reg 2(4); 4 reg 2(5)(c); 5 reg 2(6) & (7); 6 reg 2(8); 7 reg 2(9); 8 [Immigration Act 71, s 33\(2A\)](#); 9 Croatia (I & WA) Regs 2013, reg 2(10) & (11); 10 [Immigration Act 71, s 8\(3\)](#); 11 [s 8\(2\)](#); 12 Croatia (I & WA) Regs 2013, reg 2(12); 13 reg 2(13); 14 reg 2(14); 15 reg 2(15); 16 reg 2(16)(a) & (17); 17 reg 2 (16) (b); 18 reg 2(18); 19 reg 2(19); 20 Reg 2(20) & Directive 96/71/EC, Art 1(3)

## Meaning of legally working

### Periods before 1.7.13

C1935 For the purposes of C1934. **2 & 3**, a Croatian national working in the UK during a period falling before 1.7.13, was working legally in the UK during that period if<sup>1</sup>

**1.** they

**1.1** had leave to enter or remain in the UK under the Immigration Act 1971 for that period **and**

**1.2** had leave that allowed them to work in the UK **and**

**1.3** were working in accordance with any condition on that leave restricting their employment **or**

**2.** they were exempt from the provisions of the Immigration Act 1971 in accordance with specific legislation **or**

**3.** they were entitled to reside in the UK under the Imm (EEA) Regs.

1 Croatia (I & WA) Regs 2013, reg 2(5)(a)

### Periods on or after 1.7.13 until 30.6.18

C1936 For the purposes of C1934. **3**, a Croatian national was legally working in the UK on or after 1.7.13 during any period in which

**1.** they are exempt from worker authorisation because they fall within one of C1934 **4** to C1934 **13** above **or**

**2.** hold an accession worker authorisation document (see C1929).

1 Accession (Croatia I & WA) Regs 2013, reg 2(5)(b)

## Meaning of “family member”

C1937 For the purposes of C1934 above a Croatian national’s family members are<sup>1</sup> (subject to the special rules about the family members of students described in C1733)

**1.** their spouse or civil partner **and**

**2.** their direct descendents or the direct descendents of their spouse or civil partner who are

**2.1** under the age of 21 **or**

**2.2** their dependants or dependants of their spouse or civil partner **and**

3. their direct ascendant relatives or the direct ascendant relatives of their spouse or civil partner **and**

4. extended family members as described in C1735 to C1736.

**Note:** see C1943 to C1945 for more on family members

1 Accession (Croatian I & WA) Regs 2013, reg 1(2)(a) & [Imm \(EEA\) Regs 2016, reg 7](#)

### **Meaning of “unmarried or same sex partner”**

C1938 An “unmarried or same sex partner” means a person who is in a durable relationship with another person<sup>1</sup>. If a DM has doubts about whether this is the case, a view should be sought from the Home Office in the first instance.

1 Croatia (I &W) Regs 2013, reg 1(2)

### **Right to reside**

C1939 For as long as they continue to satisfy one of the conditions for exemption in C1934 above, Croatian nationals **who are not subject to worker authorisation** have the same rights to reside as a non - accession EEA national such as a French or German national.

### **Self-employment**

C1940 Transitional provisions in the Treaty of Accession do not allow limitation of the principle of freedom of movement for self-employed persons within the EEA. This means that, from 1.7.13, all Croatian nationals regardless of whether or not they are subject to worker authorisation have a right to reside as a “qualified person” when they are working as a self-employed person in the UK<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 6\(1\); reg 14](#)

C1941 Any Croatian national who is a self-employed person in the UK will retain that status and a right to reside if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident<sup>1</sup>.

1 [Imm \(EEA\) Regs 2016, reg 6\(4\)](#)

C1942 With effect from 1.7.13, a Croatian national who is self employed in the UK or who retains that status in accordance with C1941 is exempt from the habitual residence test for the purposes of UC<sup>1</sup>.

1 UC Regs, reg 9(4)(a)

**Note:** DMs are reminded that work as a self employed person must be genuine and effective (see C1362 to C1363). In addition DMs may need to establish whether at any particular moment in time a claimant is a self-employed person (on which see C1452).



## Family members

C1943 In general the family members of an EEA national with a right to reside in the UK, also have a right to reside derived from and linked to the EEA national's right to reside<sup>1</sup>.

[1 Imm \(EEA\) Regs 2016, reg 14\(2\)](#)

C1944 Where a Croatian national **not** subject to worker authorisation has a right to reside in the UK then C's family members (as defined in C1937) are not subject to worker authorisation and have the same rights to reside as the family members of any other EEA national.

C1945 However where a Croatian national **is** subject to worker authorisation then only

**1.** their spouse, civil partner, unmarried or same sex partner (hereafter "partner") **and**

**2.** their (or their partner's)

**2.1** children **or**

**2.2** grandchildren

who are aged under 21 or dependant

escape the requirement for worker authorisation (see paragraph C1934.10). A Croatian national's Croatian father, father in law, mother, mother in law or grandparents will have a right to reside as family members of an EEA national. However in their own right they will only have the limited rights to reside of any Croatian national subject to worker authorisation (see C1928 to C1933) (i.e. as an authorised worker, a self-employed or self sufficient person or a student). In other words they have a right to reside in the UK but their access to work and the labour market here is limited.

# Meaning of “Habitual Residence” C1946 - C1975

[Meaning in UK law C1951 - C1960](#)

[Meaning in EU Law C1961 - C1975](#)

[[See Memo ADM 07/21](#)]

C1946 There is no definition of “habitual residence” in UK domestic or EU law. However the meaning of this phrase has been discussed in case law. Although broadly similar there are some differences between the meaning of habitual residence in UK domestic law and the meaning that has developed in EU law.

C1947 Where EU applies the EU law meaning will take precedence, but if EU law does not apply the meaning developed in domestic law should be applied. EU law will apply if the person concerned has exercised their right<sup>1</sup> to move and reside freely in the territory of the Member States.

1 TFEU, Art 21

C1948 – C1950

## Meaning in UK law

### Requirement to establish a residence that is habitual in nature

[[See ADM Memo 02-21](#)] [[See ADM Memo 14-21](#)] [[See Memo ADM 11-22](#)] [[See Memo ADM 10-23](#)] [[See Memo ADM 17-23](#)]

C1951 To be habitually resident in a country a person must have actually taken up residence and lived there for a period. It is not sufficient that the person came to this country voluntarily and for settled purposes. He must be resident in fact for an appropriate period of time which demonstrates that his residence has become, and is likely to remain, habitual in nature<sup>1</sup>.

1 [House of Lords, Nessa v CAO \(1999\) I WLR 1937 HL](#)

### Settled intention to remain

C1952 The period of time cannot begin before the person is both living in the UK, and has a settled intention to remain in the UK for the time being. The person does not have to intend to remain permanently.

### Relevant factors

C1953 Whether and when a person’s residence has become habitual in nature is a question of fact. The

period is not fixed and depends on the facts of each case. Amongst the relevant factors to be taken into account are bringing possessions so far as is practicable, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, and having durable ties (this is sometimes called "centre of interest" (see C1966)) with the country of residence or intended residence<sup>1</sup>. The list is not exhaustive and any facts which may indicate whether or not the residence is habitual in nature should be taken into account.

1 [House of Lords, \*Nessa v CAO\* \(1999\) 1 WLR 1937 HL](#)

C1954 Only the appropriate weight should be given to factors wholly or partly outside the person's control. The person may have close relatives, even immediate family, outside the UK. There may be an intention that family members will join the person here when permission to do so can be obtained. The person may, quite reasonably, visit them regularly. That need not indicate that the person himself does not have a settled intention to remain in the UK, or that he cannot be habitually resident here. Cultural differences in the nature of contact between family members should be respected.

C1955 It is not necessary to have permanent or private accommodation to establish habitual residence. A person may be resident in a country whilst having a series of temporary abodes.

C1956 A person's financial viability may be a relevant factor, but the test for habitual residence should not be applied so as to prevent access to public funds. It must be applied in a way that allows for the possibility of a claimant establishing both habitual residence and an entitlement to benefits<sup>1</sup>.

1 [House of Lords, \*Nessa v CAO\* \(1999\) 1 WLR 1937 HL](#)

### **Appropriate period of time**

C1957 The appropriate period of time need not be lengthy if the facts indicate that a person's residence has become habitual in nature at an early stage<sup>1</sup>. In some circumstances the period can be as little as a month, but it must be a period which is more than momentary in a claimant's life history<sup>2</sup>. A period of between one and three months is likely to be appropriate to demonstrate that a person's residence is habitual in nature. Cogent reasons should be given where a period longer than three months is considered necessary<sup>3</sup>.

1 [House of Lords, \*Nessa v CAO\* \(1999\) 1 WLR 1937 HL](#); 2 CIS/4389/99; 3 CIS/4474/03

### **Becoming habitually resident**

C1958 The nature of a person's residence should be considered throughout the period in question, to establish whether or when it became habitual. The fact that a person's residence has become habitual in nature after a period of time does not mean that the residence was habitual in nature from the outset. Residence only changes its quality at the point at which it becomes habitual.

## Resuming a previous habitual residence

C1959 There may be special cases where a person who has previously been habitually resident in the UK resumes that habitual residence immediately when he returns to the UK following a period living abroad<sup>1</sup>. The only element of habitual residence that is bypassed by a returning former resident is the need to be resident in the UK for an appreciable period.

1 [House of Lords, \*Nessa v CAO\* \(1999\) 1 WLR 1937 HL](#)

C1960 Factors to be considered in deciding whether the previous habitual residence has been immediately resumed include<sup>1</sup>

1. the settled intention to remain,
2. whether the person is in a position to make an informed decision about residence in the UK,
3. the ties and contacts with the UK retained or established by the person while abroad,
4. the reasons why the claimant left the UK and became habitually resident elsewhere,
5. the similarity between their residence in the UK now and when they were previously here, **and**
6. the length of the period of absence<sup>2</sup>.

**Note:** this is a different situation to that where a person is temporarily absent from the UK and does not lose their habitual residence during that period of absence.

### Example

On 4.2.18, Alex returned to the UK after undertaking a 12 week placement in Tanzania. This was a voluntary placement with the International Citizen Service, a scheme funded by the UK Government Department for International Development (DfID). Alex makes a claim to UC from 5.2.18.

As this was a recognised voluntary scheme funded by DfID, which from the outset was temporary in nature (i.e. a 12 week programme), and as the claimant's intention was to return to the UK following the end of the programme, the DM determines that Alex's centre of interest remained in the UK during his absence, that the absence was temporary and that Alex did not lose his habitual residence during the period of his absence.

1 [House of Lords, \*Nessa v CAO\* \(1999\) 1 WLR 1937 HL](#); 2 CIS/1304/1997 and CJSA/5394/1998

## Meaning in EU Law

C1961 When deciding whether a person is habitually resident for EU law DMs should consider whether a person is resuming a previous habitual residence before taking into account other factors in paragraph C1960.

## Resuming previous residence

C1962 A person with habitual residence in the CTA who exercised his right to freedom of movement under European law and then returns to resume his residence in the CTA may be habitually resident immediately on his return<sup>1</sup>.

1 Case C-90/97, Swaddling v CAO (1999) All ER (EC) 217

C1963 A UC claimant who

1. was previously habitually resident in the CTA **and**
2. moved to live in another Member State **and**
3. returns to resume the previous habitual residence

is habitually resident immediately on arrival in the CTA.

C1964 In deciding whether the claimant is resuming previous residence the DM should take account of the length and continuity of the previous residence in the CTA and whether the claimant has maintained sufficient links with the previous residence to be said to be resuming it rather than commencing a new period of residence.

### Example

The claimant, a UK national, lived and worked in UK before moving to Germany where he worked for several years. He was made redundant and having failed to find work in Germany for three months he returned to the UK where he had family and friends. On claiming UC he stated that his intention was to find work and remain permanently in the UK. UC was awarded because he was resuming a previous habitual residence

### Factors to take into account

C1965 When deciding where a person is habitually resident for EU law, the DM should take into account the

1. person's main centre of interest<sup>1</sup>
2. length and continuity of residence in a particular country
3. length and purpose of the absence from that country **and**
4. intention of the claimant.

**Note:** This is not an exhaustive or conclusive list. There may be other factors that are important in deciding whether a person is habitually resident in an individual case.

## **Centre of interest**

C1966 People who maintain their centre of interest in the UK, for example a home, a job, friends, membership of clubs, are likely to be habitually resident in the UK. People who have retained their centre of interest in another country and have no particular ties here are unlikely to be habitually resident in the UK.

## **Length and continuity of residence**

C1967 A person who has a home or close family in another country would normally retain habitual residence in that country. A person who has previously lived in several different countries but has now moved permanently to the UK may be habitually resident here.

## **Length and purpose of absence**

C1968 Where a person spends time away from the UK, the DM should consider the frequency, length and purpose of the absences and decide whether habitual residence in the UK has been lost. If a person who is working abroad returns frequently, for example to visit family or because a home has been retained here, it is likely that habitual residence in the UK has not been lost. Infrequent visits or the purchase of a home abroad may point to the opposite.

## **Employment**

C1969 The claimant's employment record and in particular the nature of any previous occupation and plans for the future are relevant. A person with the offer of genuine and effective work in the UK, whether full time or part time is likely to be habitually resident here.

## **Intentions**

C1970 The fact that a person may intend to live in the UK for the foreseeable future does not, of itself, mean that habitual residence has been established. However, the claimant's intentions along with other factors, for example the purchase of a home in the UK and the disposal of property abroad may indicate that the claimant is habitually resident in the UK.

C1971 A claimant who intends to reside in the UK for only a short period, for example on holiday, to visit friends or for medical treatment, is unlikely to be habitually resident in the UK.

C1972 Workseekers do not come within the scope of the Regulations and Directives<sup>1</sup> which define 'workers' for the purpose of deeming the satisfaction of the habitual residence test and EEA nationals who are seeking work in the UK may be subject to the test if they have no established link with the UK employment market<sup>2</sup>.

1 Regulation 1612/68; Directive 2004/38/EC; 2 Case C-138/02 Collins v Secretary of State for Work and Pensions.

C1973 However citizens of the EU are entitled not to be discriminated against whether or not they come within the scope of the regulations and Directives which apply to 'workers'<sup>1</sup>. In a judgment of the ECJ<sup>2</sup> it was held that although the habitual residence test discriminated against work seekers, because it could be satisfied more easily by UK nationals than by nationals of other Member States, that discrimination was not unlawful if it could be justified on the basis of objective criteria independent of nationality. The test had to be proportionate to the legitimate aim of ensuring that there is a genuine link between a claimant and the geographic employment market in question. When this case returned to the domestic courts the Court of Appeal concluded that the habitual residence test was not incompatible with EU law<sup>3</sup>.

1 TFEU, Arts 18 & 20; Case C-184/99 (Grzelczyk); 2 Case C-138/02 (Collins)

3 Collins v SSWP [2006] EWCA Civ 376

C1974 The period required for the Secretary of State to be satisfied that there is a genuine link with the UK employment market is not defined and must be considered in the light of the circumstances. However it should be long enough to demonstrate the sustained nature and relevance of the search. The Commissioner has held<sup>1</sup> that the period was not sufficient in a case where the claimant

- had not previously worked in any Member State other than temporary work in the UK 17 years previously
- had not made any real enquiries about work before arriving in the country
- had not made any arrangements for accommodation and was staying with a friend
- was single with no dependents
- had close family and a bank account in the USA
- had a return ticket to the USA (although that was bought because it was cheaper than a single)
- had been looking for work for no more than a month.

The Commissioner further expressed the opinion that, in the circumstances, a further month of residence and work search would not be enough even though at the end of that time the claimant found work that was full time but not in the sector in which he was particularly interested.

1 R(JSA)3/06, para 50

C1975

## Absences from GB C1976 - C1985

C1976 The Act allows<sup>1</sup> regulations to be made specifying circumstances in which

1. a person is or is not to be treated as in GB
2. a temporary absence from GB is to be disregarded.

1 [WRA 12, s 4\(5\)](#)

C1977 - C1985



# Temporary Absences C1986 - C1999

[One Month C1986](#)

[Extension to One Month disregard C1987](#)

[Six Months - Medical treatment C1988 - C1990](#)

[Six Months – Mariners & Continental Shelf Workers C1991 - C1999](#)

## One Month

C1986 For the purposes of deciding whether a person is “in GB” a temporary absence is disregarded provided that<sup>1</sup>

**1.** the person was entitled to UC immediately before the temporary absence started **and**

**2.** the absence<sup>2</sup>

**2.1** is not expected to exceed **and**

**2.2** does not exceed

one month.

1 [UC Regs, reg 11\(1\)](#); 2 [reg 11\(1\)\(b\)\(i\)](#)

## Extension to One Month disregard

C1987 Where the temporary absence is

**1.** in connection with the death of

**1.1** a partner, **or**

**1.2** a child or qualifying young person<sup>1</sup> for whom the person is responsible **or**

**1.3** a close relative of the person, his partner or a child or qualifying young person<sup>1</sup> for whom the person or their partner is responsible **and**

**2.** the Secretary of State considers that it would be unreasonable to expect the person concerned to

return to GB within the first month

the one month disregard described in paragraph C1986 may be extended by up to one further month<sup>2</sup>.

**Note:** for guidance on the meaning of qualifying young person see ADM Chapter E2.

1 [UC Regs, reg 2 & 5](#); 2 [reg 11\(2\)](#)

## Six Months - Medical treatment

C1988 In deciding whether a claimant satisfies the basic condition that they be “in GB”, a temporary absence which is not expected to exceed and does not exceed 6 months is disregarded where the absence was solely in connection with

### 1. the claimant undergoing<sup>1</sup>

**1.1** treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**

**1.2** medically approved (see note below) convalescence or care as a result of treatment for an illness or physical or mental impairment, **provided** that the claimant had that illness or disability before leaving GB **or**

### 2. the claimant accompanying their partner, or a child or QYP for whom they are responsible where that partner, child or QYP is undergoing<sup>2</sup>

**2.1** treatment for an illness or physical or mental impairment by or under the supervision of a qualified practitioner **or**

**2.2** medically approved (see note below) convalescence or care as a result of treatment for an illness or physical or mental impairment provided the partner, child or QYP had that illness or disability before leaving GB.

**Note:** “medically approved” means<sup>3</sup> certified by a medical practitioner

1 [UC Regs, reg 11\(3\)\(a\)](#); 2 [reg 11\(3\)\(b\)](#); 3 [reg 11\(5\)](#)

### Example 1

Joseph suffers from severe depression he goes to France for some specific therapy. This lasts for a total of four months. The trip was solely in connection with a mental impairment and given by a qualified medical practitioner. The DM decides that the claimant is temporarily absent for four months and remains entitled to UC throughout.

### Example 2

Paul a UC claimant who travelled to Cyprus on holiday on 1 August 2021 with the intention of staying for 3 weeks. Unfortunately, whilst on holiday he had an accident and needed a hip replacement which meant he could not travel for 8 weeks. As a result, Paul was outside the UK for more than one month. The accident occurred after Paul had left GB. The DM determined the claimant was not entitled to UC from 1 September 2021 when Paul's absence exceeded one month.

### **Example 3**

Jack and Jill have saved up for their dream holiday in Australia. They leave the UK on 01/05/21 and have a return flight booked for 31/05/21. On arrival in Australia, while entering the airport, the sign above the main building falls from its mounting, breaking Jack's back and leaving him immobile and in a coma. On 02/06/21 Jill informs DWP that they will be unable to leave Australia for at least six months as she is needed at his bedside to try to bring him out of the coma, and will then need to help Jack's long medical recuperation before he is able to board a flight home. The DM decides that the disregard of the absence cannot be extended to six months under Reg 11(3) of the Universal Credit Regulations 2013 because they did not go abroad for the sole purpose of receiving medical treatment for the accident that was to befall them in Australia. Jack and Jill are not entitled to UC from 1 June 2021 until they return to GB.

### **Meaning of “qualified practitioner”**

C1989 “qualified practitioner” means<sup>1</sup> a person qualified to provide medical treatment, physiotherapy or a form of treatment that is similar to, or related to, either of those forms of treatment.

1 [UC Regs, reg 11\(5\)](#)

### **Meaning of “partner”**

C1990 A partner means<sup>1</sup> the other member of a couple “couple” is defined in the Act<sup>2</sup> as meaning

- 1.** a man and woman who are married to each other and are members of the same household;
- 2.** a man and woman who are not married to each other but are living together as husband and wife;
- 3.** two people of the same sex who are civil partners of each other and are members of the same household;
- 4.** two people of the same sex who are not civil partners of each other but are living together as civil partners.

**Note:** For the purposes of this definition, two people of the same sex are to be treated as living together as if they were civil partners if, and only if, they would be treated as living together as husband and wife were they of opposite sexes.

## **Six Months – Mariners & Continental Shelf Workers**

C1991 In deciding whether a claimant satisfies the basic condition that they be “in GB”, a temporary absence is disregarded if it is not expected to exceed, and does not actually exceed, 6 months and the claimant is<sup>1</sup>

1. a mariner **or**
2. a continental shelf worker who is in a designated area or a prescribed area

1 [UC Regs, reg 11\(4\)](#)

### **Meaning of “mariner”**

C1992 A “mariner” means<sup>1</sup> a person who is in employment under a contract of service as a

1. master or member of the crew of any ship or vessel **or**
2. in any other capacity on board any ship or vessel provided that the employment in that capacity is for the purposes of that ship or vessel or her crew or any passengers, cargo or mails carried by the ship or vessel

provided the contract of service is entered into in the UK with a view to its performance while the ship or vessel is on her voyage.

1 [UC Regs, reg 11\(5\)](#)

### **Meaning of “continental shelf worker”**

C1993 A continental shelf worker means<sup>1</sup> a person who is employed (whether under a contract of service or not) in a designated area or a prescribed area in connection with any activity mentioned in specific legislation<sup>2</sup> (stated briefly activities connected with the exploration or exploitation of natural resources on the shore or on the sea bed).

1 [UC Regs, reg 11\(5\)](#); 2 [Petroleum Act 1998, s 11\(2\)](#)

C1994 Designated area means<sup>1</sup> any area designated by Order in Council under specific legislation<sup>2</sup> as an area where the UK’s rights with respect to the seabed and subsoil and their natural resources can be exercised.

1 [UC Regs, reg 11\(5\)](#); 2 [Continental Shelf Act 1964](#)

C1995 Prescribed area means<sup>1</sup> any area over which Norway or any EU country\* (except the UK) exercises sovereign rights to explore the seabed and subsoil and exploit their natural resources. This area must be outside the territorial water of

**1. Norway or**

**2. any EU country (except the UK) or**

**3. any other area specified under specific legislation<sup>2</sup>**

1 [UC Regs, reg 11\(5\)](#); 2 [Petroleum Act 1998, s 10\(8\)](#)

C1996 - C1999

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**